

Town of Milton
Planning & Zoning Committee Meeting Minutes
May 30, 2007
7:00 P.M

Members Present:

Linda Rogers
Ginny Weeks
Bill Brierly

Dean Sherman
Louise Frey

Michael Filicko
Ted Kanakos

Others Present:

Bob Kerr
Debbie Pfeil

John Brady

Robin Davis

Linda Rogers called the Public Hearing to order at 7:11pm.

Linda Rogers: As a reminder, if you have never been here before, you need to identify yourself for the record, walk up to the microphone when you make your comments. Zoning members and lawyer when he gets here, and our consultants also have to identify themselves for the record by stating your name and then your comments. So we will begin tonight's meeting with the first item agenda being a public hearing.

The applicant, Milton Development Corp. requesting a preliminary approval for a parking lot to be located off Front Street behind the Milton Theatre. The property is zoned TC which is Town Center and is further identified by Sussex County Tax Map and Parcel # 2-35-14.19-112.00.

Linda Rogers: Is there anyone present on behalf of this application?

Charles Wagner: I am the President of the Milton Development Corporation. As you can see from the plans, I think you all have a copy of the plans in front of you, we had purchased the Post property and through previous meetings had subdivided that property so that the land, which was behind the Post property, became land that was attached to the theatre, so that we could have a parking lot back there for the members of the performance group and the employees. We have gone through a year and a half process with the Corp of Engineers to identify federal wetlands; the ability to encroach on some of those federal wetlands with a sea wall, the different materials that had to be approved by the Corp of Engineers to have that wall constructed, and we have applied for and received a building permit from the Town to construct that sea wall. When we originally presented to the Corp of Engineers, we presented a much larger plan with brick pavers and things like that; they did not want that because we encroached too far on the wetlands so we had to scale the whole project back. One of the things they wanted was a permeable surface so that the water could percolate through that surface. It's less than, it's 4,048 s.f. now, in it's present form, and we have, we are at this point, proposing a crush and run surface on the top of that parking lot which will allow us to come down the alley, Front Street, and come into the back of the theatre; that will give us a permeable surface. When we applied for the permit, the Town said, because it's a parking lot, it has to be a paved surface, so we're here tonight, because we have the permit for the sea wall, to get permission from the planning and zoning to do that

parking lot portion and the discussion is the top and some of the issues that have been brought up are the surface, whether it should be paved or crush and run; the markings on that surface if it's paved then it should be marked; the bumpers which would be put in on either surface; the lighting which we have on the building will illuminate the whole parking lot; curbing to run on the north side of Front Street so it essentially is running a curb down the side of the city owned Front Street alley. The flood plane elevations and some of the other questions that were brought back to us have been submitted with the sea wall, or the navy wall, application so you all have drawings of those that went into the Town. I think those are all the issues. Can I address any questions?

Linda Rogers: Does anyone have any questions for the applicant?

Michael Filicko: Dr. Wagner, are you asking for a non-impervious surface in place of blacktop?

Charles Wagner: We would prefer to have a pervious surface; that we would have the crush and run, so it would allow the water to go through that surface and down. That's originally the way we designed it so any water coming down....

Michael Filicko: I guess I didn't phrase my question correctly. I meant to say impervious.

Charles Wagner: Well, we want it to be pervious, or we want it to be....

Michael Filicko: So something like a crush and run or limestone; white limestone is very attractive.

Charles Wagner: Well crush and run right now would help us because eventually we are going to be doing more construction so we don't want to go tearing it up 4 or 5 times as we go through it. Crush and run would give us reasonable progression to this point. We'd have a useful parking lot, we could work with the sea wall and everything else, and as we come back to you all with additions on the theatre and things like that, then we can tear that up and put new foundations and things like that through, and/or around that piece. That's what essentially we'd like. We originally wanted pavers, cause we thought we'd have a sidewalk going around the buildings that are still there, the Presta buildings, but that all fell apart because we couldn't get the Corp. to give us more access to that federal wetlands, so that's all federal....

Michael Filicko: So you wanted a walkway in the back of the theatre?

Charles Wagner: We wanted a walkway in the back to be able to come around and we're still waiting, when the Presta buildings were down and the buildings up, and we've had a chance to discuss what they are finally going to do, hopefully we can get some egress around the back of the building for both of us, but that's whatever months down the road when that finally comes to fruition. It's a work in progress as you know.

Linda Rogers: So the lawyer's not here. Parking lots in the Town of Milton are required to be hard surfaced? This is a requirement of the ordinances.

Bob Kerr: Yes this is a requirement of section 7.2.

Linda Rogers: So, in order to not have a hard surface on a parking lot, that's not a part of this application request that I see, where they have to go to the Town Council, Board of Adjustments or can it be made part of this application, if in fact the parking lot is granted? Is that a question you all can answer or should we just move ahead until John get's here?

Bob Kerr: If you give me a minute I may be able to answer it. Because it's in Town Centre, there are some various alternate requirements and I know that you can waive the number of spaces, I'm not sure that you are allowed to waive materials of construction. As an example, in LPD, you can change the width of streets but you can't change the thickness of the paving. I'm just not sure of the answer without taking a moment.

Charles Wagner: We have precedence down town behind some of the, the one restaurant across the street; there is crush and run.

Linda Rogers: But that was put there prior to the time a lot of these ordinances were put into effect. So we just need to make sure how we can do whatever it is that needs to be done, if at all possible. Does anyone else have any questions for the applicant?

Ted Kanakos: When all is said and done, you've developed everything, what is the final surface that you would like to see on this parking lot?

Charles Wagner: At the end of the day, when we finish the addition to the theatre and we've put the tower in the back, things that you don't see on this application, we'll probably have blacktop; meaning 2 or 3 years down the road. Right now we would like that parking lot with crush and run so that we can make it a work in progress and then as we go through time, we will come back to you for each one of those additions. We'll have to because we are going to add on to the building and things like that. We'd like to see pavers back there where donors pay for the pavers and have their names on it and things like that; that's what we'd like to see.

Michael Filicko: Dr. Wagner, wouldn't blacktop cause water run-off into the river?

Charles Wagner: It will cause more run off, yes. The pavers wouldn't because they are more pervious to fluids so they would allow some of the fluid to go through. And there are some other surfaces we could use but we are not ready for that yet. For right now, we need to have a functional parking lot that will sit up against that sea wall where our employees can come and park and things like that, but as you know, it's been a progress, a work in progress.

Michael Filicko: Well it seems like down the road the best surface to have is an impervious surface as opposed to blacktop if we are eligible...

Charles Wagner: You mean a pervious surface?

Michael Filicko: A pervious, yes. Again I got it wrong. As I said, like a white limestone is very, very attractive if it is maintained.

Charles Wagner: Right. But again...

Michael Filicko: And that's up to our attorney that is not here, I believe.

Charles Wagner: Well, the material, whether it be white limestone or crush and run at this point, and we can again, we can come back and address that as we move through time. Because we do have a lot of modifications to make as hopefully the Post house is sold and we develop that property with that owner, then hopefully we can sort of meld that parking lot in for the two buildings, but we'll see.

Ted Kanakos: One other question. The entrance, the proposed driveway entrance, it goes by another proposed driveway which is the driveway for the Post house? For parking there?

Charles Wagner: That is Front Street. That is a town owned alley.

Ted Kanakos: Yes, then you turn right onto your...

Charles Wagner: You turn right and that entrance would be a

Ted Kanakos: And then you can turn another right and that goes on to the parking for the Post house?

Charles Wagner: That would be the parking for the Post house, but there would be a permanent egress for the Post house property.

Ted Kanakos: So you will give them...

Charles Wagner: Yes, permanent right of way.

Virginia Weeks: Would that egress be deeded? And recorded?

Charles Wagner: Yes it will. We've shown that on every drawing.

Virginia Weeks: Another thing, you keep mentioning when you expand, when you build, when you put a pier on, what about a loading dock? I don't see....

Charles Wagner: We don't need a loading dock. It's not a loading area per say. What we are proposing and we got the Corp of engineers to give us 15 feet so we can come back. If you look at the drawing, it goes 15 feet back right off the back of the theatre. We want that to be the new

stage, so it will go back and up 2 or 3 stories and then we'll have what we call flies in a tower, so we'll have a tower out there that the actors and actress can go up, come off the second story where they dress, and the dressing rooms, come across the bridge, go down that tower and then go into the theatre. And then that will give us areas to bring stages back and forth or flies.

Virginia Weeks: And how will those get into the building.

Charles Wagner: Well they'd be going into the parking lot, but we don't particularly need loading docks.

Virginia Weeks: I think its...is not required a loading dock by the Town?

Bob Kerr: Only if it's a factory or loading area.

Debbie Pfeil: For their new construction, they'd be subject to all the current codes, but right now they are not expanding their building, so when they come in for new construction, they'd be subject to all the current codes right now, anything you have when their new design, and if you're allowed to waive anything in the Town Centre, then that would be worked out with the planning commission and the Council.

Dean Sherman: Is Front Street extended wide enough for it to be a two-way street?

Charles Wagner: No. Well, it is, but it's now. It doesn't meet the criteria as far as a two-way street goes with the side skirts. No, but you can get two cars by each other.

Dean Sherman: So with the proposed 6 parking spaces along the navy wall, in the future, when you expand, are you going to lose some of these spaces?

Charles Wagner: We'll lose the most northern spot. The one that is right against, in diagonal into the edge of the building, because that is where the tower would be.

Virginia Weeks: At present, people use Front Street for parking. It's a public street, with public parking on it. How will we address the loss of those parking spots? Is the Town willing to do that?

Charles Wagner: Well, they are not really public parking spaces. I mean there's no, I mean I don't know what the Town has it marked as far as parking; people have parked in there, but most of those people are our staff who end up parking there during a performance of something like that. The Town can address that; it's their alley, they can address it any way they want to as far as those spaces go, but I don't know if those spaces are counted in your total downtown parking are they?

Virginia Weeks: No but they are available to park on, on public land.

Bob Kerr: One of the bigger questions is that Front Street doesn't meet any of the Town requirements as far as right of way and width. It's as much an alley as anything. It does not receive any state maintenance through street aid; the state doesn't acknowledge that it is Town street. I don't know that John has done any research to determine that it is a Town street or that it extends past this property. It's almost the way the wording on the drawing calls that a proposed 15' wide extension to road for egress, regress and digress in favor of parcel 112 sounds more like an easement than a town owned right of way. It sounds more like it may be in private ownership.

Virginia Weeks: And who would be responsible, Dr. Wagner, for the maintenance of that?

Charles Wagner: That's the Town's road. We've proposed that before, because we, well that was whole other discussion a couple of months ago.

Bob Kerr: I think that's something that you can take the testimony now and during the business portion of the meeting, hopefully by that the time, the Town's attorney will be here and we can have him further comment.

Charles Wagner: We are going to put curbing along the northern edge of that as one of the requirements to us and that's the piece of Front Street that butts on our property; we're going to put curbing down along that edge to the parking spaces.

Virginia Weeks: I realize the navy wall is not part of this, but what is a navy wall? I have no idea.

Charles Wagner: It is the same as we have on the other side where Bodies is, where you have that steel wall that the walkway is on.

Virginia Weeks: Is that what you'll be putting in, exactly like that?

Charles Wagner: Very similar. All those drawings have been submitted to the Town and...

Virginia Weeks: Is that high enough, Bob, for parking bumpers and stops and so on?

Charles Wagner: It is. The wall is actually the same height as the wall across the street and then there will be bumpers so the cars will stop, and there will be a railing above that; that's still being designed but that's part of that.

Bob Kerr: I have no information about the height of the wall or any of the details of construction. There was nothing submitted with the package that I received.

Charles Wagner: Yes, but you have the permit pieces that John brought in for the permit, when we originally submitted for the permit. Those drawings were submitted by John.

Bob Kerr: But I have nothing. Nothing was forwarded from the Town office to my office for review.

Charles Wagner: Oh, okay, to your office, right, I'm sorry.

Linda Rogers: Does anyone else have any questions to the applicant?

Charles Wagner: Thank you.

Linda Rogers: Ok, thank you. Does anyone else present that would like to speak in behalf of this application? Is there anyone that would like...ok.

Jim Welu: 30231 East Mill Run, Milton. I'm speaking as an individual but also unofficially as a member of the Broadkill River Water Shed study group, and I would strongly urge this commission or any other body of the Town of Milton to make sure that the surface of this parking area is pervious. At some point, limestone or oyster shells or clam shells or something might be an inappropriate surface. The crush and run is certainly acceptable to absorb the water rather than allowing to bunch up on a hard surface and go directly into the Broadkill River. I think I would disagree with Dr. Wagner's idea of at some point, once they finish their construction, on putting a hard surface down. I think that would defeat the whole purpose of trying to keep the water from going directly in the Broadkill River and I'm not sure if I understood correctly, Dr. Wagner, but I thought that the navy wall, is that level with the parking lot or is it a little higher?

Charles Wagner: It's a little higher.

Jim Welu: A little higher, because I certainly would want something that would catch storm water, even running on a heavy rain, over the crushed stone, that would slow it down and onto go directly over the wall; but probably is going off to the right which is a lower section even and would filter through whatever grassy area there is, that's really behind the other two buildings to the north of the theatre. One other thing, kind of a housekeeping matter that I would strongly recommend that whoever's involved with the theatre and the people using this lot, keep a fairly close eye on the vehicles that are using it; that if any of them are having oil leak, transmission leak, problems that they be told to stay out of the parking lot until they are fixed because that's all going to filter down through the crush and run and it's going to end up in the Broadkill River. Thank you.

Linda Rogers: Is there anyone that would like to speak in behalf of this application? Is there anyone that would like to speak in opposition to this application? Would anyone like to make any comments at all?

John Star: 12903 Union Street Extended. Just a matter for the Town to consider. Mr. Wagner has already pointed out that he's putting brick work, masonry work, along the edge, curbing on

the north side. If in fact, they have any plan to put any on the south side, or adjacent to my property, that there'll be some form of a meeting or questions as to the width of the street, whatever you may make his application bear; as it is it's approximately 16' wide, according to the Town Map and both our deeds. So really that is the only question I have that if in fact that comes about as a question that there would be some...

Linda Rogers: Your concerned about curbing that may be put on the south side of the...

John Star: Be required to be put on the south side. Another words, he's putting it on the north side which is part of his application as he stated, but there was no mention of the south side, which is on my property; that in fact, if there is a requirement that, I'm assuming I would be notified to what I would have to do or not do or what the Town imposes upon him to do, that I be notified and cause actually the curbing that is on the south side is not placed in the correct position. So that's all I need to say. Thank you.

Linda Rogers: Thank you. Does anyone else like to make any comments?

John Collier: 301 Coulter Street. I have one question. Is this going to be a private or public parking lot?

Charles Wagner: It's for the theatre.

John Collier: Okay, so it will be a private parking lot.

Charles Wagner: Yes

John Collier: Okay. And then my other questions would be, well let me say for the record, I am not in opposition of this, I just have questions. This would be for Mr. Kerr. Mr. Kerr, is this plan in compliance with 7.2.1 which is basically the general requirements for parking area?

Bob Kerr: No.

John Collier: Okay and then further 7.2.4, Section 2, Item b, which is about setbacks from residential areas, is it in compliance with that also?

Bob Kerr: It does not have the set backs, however under section 7.2.5, because it is in Town Centre, it's one of the things that the commission can waive.

John Collier: Okay, well I was just curious if that was so. Alright, thank you very much.

Linda Rogers: Does anyone else have any comments? Does anyone on the commission have any questions or comments?

Ted Kanakos: The first issue that Mr. Collier brought up the general regulations for parking, and you said they aren't met? Could you explain how they are deficient?

Debbie Pfeil: Senior Planner for the Town of Milton. When we start the letter that I wrote May 23rd which the applicant, I believe has a copy of, we get to page 2 of 3, the parking section, let's see, the section 7.2.1, subtitle 2, it says "the proposed parking spaces, since you are adding on parking after the fact that the theatre being built, you wouldn't be required the total number of spaces based on the theatre's square footage. Item 3, the proposed parking spaces are the required 10' x 20'. Number 4, the area containing one or more parking spaces does have direct access to the public street, and 5 the closest intersection of 2 public right of ways are not closer than permitted 30'. The closest intersection is, and this is just a 100' estimate from the entrance. And Item 7 underneath section 7.2.1, it is unknown if the applicant is providing lighting for the parking lot regarding safety. This will need to be shown on the final site plan. I am going to skip my comment C until your Town Solicitor attends the meeting that is the off street parking waiver for the impervious surface. In Section 7.2.6, the construction of the parking areas, item 1 the applicant is proposing the individual parking spaces so they comply. Number 2, they need to provide curbing or wheel stops. They are not shown nor provided. Number 3, the parking lot does not address any design, grading or surface for proper drainage. So the last two items, 2 and 3, according to my review, those do not meet the compliance, as well as the section further states "all parking areas shall be paved with a suitable, all weather, dust free surface." And the

proposed parking is proposed to be crush or run. Once again, I am going to have to forward that to your city attorney for comment tonight when he gets here.

Bob Kerr: The only thing I would add to that, and it's a bit of a disagreement, is whether there is access to a public road or alley, and again it's because I don't know who owns Front Street or the extended part of Front Street.

Virginia Weeks: I am concerned that on the proposed 15' right of way, on the site plan it says that it's in favor of parcel 112 and I certainly think that we should consider having that in favor of parcel 112 removed, because people who own land on the other side of that, and I don't want it to appear that this is just for 112.

Debbie Pfeil: That would be addressed in the right of way comment if Bob had just made, if it is a public street. When that research is done, this is a public road or right of way or alley or whatever's determined, then it would all the properties owners would have access to it. If it is private, then during the research for your final submittal, they would have to change the wording on here based on the engineer seal.

Virginia Weeks: Thank you.

Linda Rogers: Does anyone else have any comments?

Louise Frey: Mr. Kerr, the applicant stated that he was going to have lighting on the building. Is that going to be sufficient for the parking area?

Bob Kerr: It may be sufficient without a lighting plan and knowing where they are on the building and what the effective radius of the lights, the height above ground, those conditions. I am not able to say.

Linda Rogers: Anyone else?

Michael Filicko: I would have to concur with Mr. Welu, in regards to the pervious parking spaces, the surface of the spaces. I think it would be imperative to not have blacktop there in regards to the run off and I hope that if this is approved, that the attorney can allow something as I said earlier like a limestone base. I don't know how those, how that could be painted to allow for parking spaces but it just seems like not only one more attractive than blacktop, it would enhance the architectural structure of the building; that beautiful Victorian home would look much better with white lime as opposed to blacktop.

Linda Rogers: Does anyone else have any comments?

Ted Kanakos: For our engineer and our consultant, Debbie you mentioned the, let's see parking 2.d.3, the parking lot does not address any design, grading or surface or proper drainage. Now also Cabe Associates quote that #6, no accommodation of storm water management is provided on the preliminary site plan. How do we address this?

Debbie Pfeil: Correct. I think you have a two part question there. Number 1, can the planning commission be empowered, do they have the authority to change the type of surface and the type of surface I would recommend would be reviewed by your engineer before we start throwing out pavers and clam shells, and all different kinds of surfaces, I'd recommend your engineer gets to look at that, but the authority on the drainage is Sussex Conservation District. So between preliminary and final, the applicant would need to go to Sussex Conservation District and determine how they are going to do proper drainage, and the reason I say this is because it is under the 5000 impervious surface ruling, but that does not mean they should not address the drainage so without having TOPOs or without having the design of the storm drainage. We cannot tell which way it's going to sheet at this time; or which way it would flow or who would be affected by it based on the preliminary plan.

Ted Kanakos: So that is a run off aspect.

Debbie Pfeil: Exactly. And the question is the run off aspect so when they come back, if the planning commission does a recommendation, when they come back for final they are going to

have to show us how they are going to handle their drainage and where the different kind of TOPOs is and where it's going to flow, so we wanted to catch that in our review to say this is a flag for them to be able to work out and they have to design and submit back prior to the final. Charles Wagner: In reply to that, one we do fall under the exemption of the square footage of that lot, okay, so it's such a small lot and we are taking the topography of the land and just enhancing that with the lot and that's been shown in all of the Corp of Engineering drawings. When we originally went to them, that's why they wanted a pervious surface. They wanted a surface that would percolate through. So essentially all that water coming off either Front Street or our property would go right into the parking lot, so there would be no issue of drainage. It's essentially going right in there. And those TOPOs are part of the engineering project that we presented to the Corp of Engineers and we'll gladly share them. To go back and re-engineer and re-design that whole thing, we could show you the TOPOs and everything else, but going through a full drainage proposal is an expensive engineering project which at this point that is why the exemption is made of this size lot, because the small lot, and we are following what is the curve of the land, so.

Debbie Pfeil: If I can make a comment back, is I understand you fall under the Sussex Conservation requirement of the 5000, we were the ones that told you about that at the meeting, but in order for the Town consultants to do their job, we have not been provided, on this plan, which you are not required at this time, you are required to have it on final, your engineer will have to submit the information on the final of where the drainage is going to go because it could affect neighboring properties and we need to make sure that doesn't happen before the commission makes it's final recommendation.

Charles Wagner: That's fine. We can do that as long as...we can show the topography.

Debbie Pfeil: Your final checklist requirement will be required before you submit and that is in the code. And as far as the surface type, once again I want to reiterate, once your lawyer comes to see if you're authorized to be able to, or have the authority to be able to change the surface type. I would recommend your town engineer have a chance to review before we start allowing multiple type of surface types for parking lots.

Virginia Weeks: Debbie, the exemption is for properties under 5000 s.f.?

Debbie Pfeil: It's Sussex Conservation District and that's of impervious area, so what they take into calculation, Bob would know more. I know the 5000 is usually the golden rule.

Virginia Weeks: Their application claims it's 14,000 s.f.

Bob Kerr: The Sussex Conservation District and it's estates, storm water regulations, it's 5000 feet of disturbed area, so you could have a 10 acre or 50,000 s.f. property, but if you're only building in a little corner of it and disturbing 5,000 s.f., then you are exempt. I think in this project though, because of the of the offsite potential drainage and how it may change it, especially not seeing any contours as this time and not know if this water runs onto the alley or Front Street extended; that it is important that soil conservation at the minimum provide a letter saying they have not objection to how it's being done.

Virginia Weeks: I concur with you, I'm also concerned because this has been, according to Dr. Wagner this is the first of several times that they will be back to us for further building and when you get it all together it comes in piece mail by piece mail by piece mail, I want to be as conservative as possible in looking at the overall.

Debbie Pfeil: Also, just a correction for the record. The 14,000 s.f. on the applicant is the actual property size, not the parking lot size. The parking lot size is actually 4, 048 s.f., but I agree with you on piece mailing things in, but the applicant has the right to come in under funding just like any developer to say we're going to do this phase, this phase and this phase. And depending on what surface they use, if they can use it or not in their next phase; it's at their risk.

Linda Rogers: Does anyone else have any questions or comments?

Evelyn Moremeyer: I'm with Coastal and Estren Research (??), the environmental firm that did the permit application for the applicant for the US Army Corp of Engineers and I would like to reiterate Dr. Wagner's statements that we did present the proposed project at a joint permit processing meeting in October of 2005 to represent as the State of DE, DNREC and the US Army Corp of Engineers. And at that time, they did urge that the project be minimized and one of the aspects of minimization is to utilize a permeable surface so that run off could infiltrate into the filled area. That was incorporated into the final plan that approved by the US Army Corp of Engineers. Thank you.

Debbie Pfeil: If you could, I have a question for you, I'm sorry. We did meet and we were told that the Army Corp of Engineers specifically stated that they did not want it paved. Since that meeting, and I did put that correspondence in my letter, we just asked that to be put in writing. Army Corp of Engineers would not submit a letter stating it did not have to be paved. Am I correct in saying that?

Evelyn Moremeyer: Yes, if I may read something from the permit, on page 2 of the US Army Corp of Engineers permit, under project specifics special conditions, it is our stated that all work performed in association with the above noted project shall be conducted in accordance with the project plans dated August 2006. And these plans did show a permeable surface. When I inquired after our meeting, the project scientist, John Brundage, who issued the permit, I asked him since we showed a pervious surface, would an impermeable surface paving be in compliance or noncompliance with the terms of the permit. To my surprise, he actually said that they care really more about the area to be filled and they authorize the area to be filled and once it's no longer wetlands when it's converted to uplands, technically they didn't have an issue with what is there, although, as I mentioned, the permit's specified that the work has to be conducted in accordance with the project plans and the Corp did recommend that when we met with them at a pre-application meeting.

Debbie Pfeil: I have one last question. When your plan was designed, and the person that designed it, did they follow the code of the Town of Milton, stating that it needed to be paved, or did you submit it as crush or run on your site. It did not follow the code...

Evelyn Moremeyer: Evidently not.

Debbie Pfeil: Okay, that was just the question I wanted to ask just so it's clear. Thank you.

Michael Filicko: Debbie, you mentioned something and if you could please clarify it for me. If the parking lot is under 5,000 s.f., what are the stipulations or requirements?

Debbie Pfeil: As far as Sussex Conservation District, under 5,000 of disturbed area they do not get involved in. The Town of Milton, however, has their own their own drainage they watch and how it's going to affect neighboring properties and that review is completed by your Town engineer. So, like I said in our comments, I don't think Bob or I are either saying we have a problem at this time, we just need the information submitted to us to determine and to also see who owns the street, and we could say the parking lot looks great and everything's fine and when it's built, the neighboring properties get flooded. During the final site plan process, they would be able to submit this information for us to be able to ensure that it is designed accordingly, even though it is under 5,000 s.f..

Michael Filicko: Thank you Debbie.

Linda Rogers: Does anyone else have any questions or comments? If not, I will entertain a motion to close the public hearing.

Dean Sherman: So moved.

Linda Rogers: We have a motion is there a second?

Louise Frey: Second.

Linda Rogers: All in Favor say “Aye”. Opposed – None. Close that public hearing.

The next public hearing for:

The applicants, Paul and Lesa Howard, are requesting a conditional use and preliminary approval for a change of use from a residential dwelling to a Physician’s office located on Union Street. The property is zoned R1 (Residential) and is further identified by Sussex County Tax Map and Parcel # 2- 35-14.15-16.00.

Linda Rogers: Is there anyone present on behalf of this application?

Debbie Pfeil: May I ask a question to the Commission? I’m just confused on the process. Is the public hearing portion for the public and the applicant and then when you open up your meeting we get involved in the discussion?

Linda Rogers: Yes.

Debbie Pfeil: So our questions, the Commission and the consultants, back and forth should happen during the meeting portion of the meeting and the public comments with the questions should happen at this portion of the meeting?

Linda Rogers: My opinion is this is the public’s chance to speak what they have to say and any questions we have of the applicant or if the public has questions of the applicant that we can answer. The meat and potatoes of the site plan is done during the meeting portion.

Debbie Pfeil: Thank you. So during this application we would address any comments from the citizens, any questions from the Commission that would not involve directly with the citizens would be in the regular portion of the meeting. I just wanted clarification.

Ginny Weeks: Madame Chairman. Would you have any objection if these plans, I should have done it with the other application, I’m willing to share mine with Mrs. Frey, if we put this so the public could what they are asking for?

Debbie Pfeil: The application are available at Town Hall prior to the meeting a minimum of seven days, people are more than welcomed to come and see all the packets, just because we have a nominal amount. There always available at Town Hall for, on public record by the Freedom of Information Act.

Ginny Weeks: Usually they are on an easel. Thank you.

Linda Rogers: Do you want to identify yourself for the record?

Eric Howard: Thank you and good evening members of the Council, Commission. My name is Eric Howard here on behalf of the applicants, Lesa and Paul Howard. This is a conditional use application for the property known as 506 Union Street and just a couple of things first, kind of for the record, as I believe is required by the ordinance we mailed certified notice, notice by certified mail to property owners and I have here for the record, the green cards for ones that have been received back and two have not been received back, we have the proof of mailing to Mr. Altholz and Ms. Spencer, if I may present those. Just one other thing for the record, we have a copy of the Lesa Howard’s deed to the property, which has a legal description, the actual meets and bounds description of the property for which are applying for the conditional use and I would like to also submit that. As I stated, this is a conditional use application to convert a single family residents into a physician’s office, professional office, at the 506 Union Street address. We believe that the use is constant with the use in the area and would not have any detrimental impact on any of the surrounding neighborhood or surrounding properties and that it is convenient and essential for the welfare of the town. I’m going to present testimony from Mrs. Lesa Howard, the owner of the property, who along with her husband Paul Howard are the

applicants and both of them will testify as to those facts. Mr. Chuck Adams of Adams-Kemps prepared the plans, the site plan you have in front of you. Mr. Adams is a surveyor, an engineer and he has prepared the plans, I would like to make one comment that we saw and we can talk about this when we get into that stage, the question and answer but there are a number of comments or questions about the preliminary site plan and about showing contours of the land and the light, type of lighting we are going to have. The lighting, the position that we'll do what you think we should do, what you want. As Dr. Howard will testify there's not going to be any evening hours so the lighting we want, I think, would be constant with the residential look, to look like a house. As far as the contours and some of the engineering type specific requirement of the site plan, we certainly realize that those things would have to be provided on a final site plan and to obtain final approval to go ahead and start building. Our hope was that we could have an idea, hopefully convince to Commission and the Council that this is a good idea, before we actually have the engineering work done. We certainly realize that it would have to be done, as we also realize that we would have to storm water management approval from the Soil Conservation District, approval from the State Fire Marshall and approval from the Department of Transportation. We certainly realize we need those approvals and they would all be gotten in due course if we obtain the approval from the Commission and the Council. So that being said, I would like to call as a witness, Mrs. Lesa Howard.

Lesa Howard: Lesa Howard. I'm not sure, I'm I suppose to state my address, I missed something.

Eric Howard: Mrs. Howard, you are the owner of the property?

Lesa Howard: Yes.

Eric Howard: And you applied to convert the use of the property from a single family home to a physician's office, as a conditional use.

Lesa Howard: Correct, yes.

Eric Howard: Do you believe that that would have any type of negative impact on the neighborhood?

Lesa Howard: I do not.

Eric Howard: And why not.

Lesa Howard: Well first let me say, I don't do public speaking, I would rather have a tooth pulled. So I have jotted down a couple of times, hopefully that will make sense. Milton as some of you know is my hometown. I lived here for the better part of my life. I very proud of the ties I have with Milton. My mother ran a business for many years in town, my brother has a business here in town and the school is named after my grandfather. My mother lived at 506, I think she would be very happy that we're considering turning it into a business. I think also we'd have a little more control over the appearance of the place if, we go back to renting, it's kind of a little bit out of our hands.

Eric Howard: Is that what you have been doing with the property?

Lesa Howard: In the past, yes, in the past.

Eric Howard: How long have you owned the property?

Lesa Howard: Since 1999, 2000.

Eric Howard: And you mother owned it a number of years prior to that?

Lesa Howard: Yes. I love Milton. I would never consider doing anything that would have a negative affect on the town. Thank you.

Eric Howard: And just for the record, the applicant is Paul Howard and he wants to use it for a physician's office.

Lesa Howard: Correct.

Eric Howard: What is your relationship with Dr. Howard?

Lesa Howard: I'm his wife.

Eric Howard: Thank you.

Lesa Howard: Thank you.

Eric Howard: That's all the questions I had for Mrs. Howard, most of the specific about the use of the property will be by Paul Howard but I'm sure if the Commission has any questions for Mrs. Howard.

Ted Kanakos: What is the natural of your husband's specialty or?

Lesa Howard: Ears, nose and throat.

Ted Kanakos: Ears, nose and throat.

Eric Howard: I was going to ask Dr. Howard but I'll just go ahead and ask you to, you are familiar with the property because you mother owned it for a number of years. What are some of the other properties nearby the property? What is immediately next door to it to the north?

Lesa Howard: Which way is north?

Eric Howard: Towards Route 16.

Lesa Howard: Towards 16, thank you. The first house is the parsonage and then the one after that is the church.

Paul Howard: Is there a parking lot between the parsonage and the church?

Lesa Howard: No not between, on the other side and behind the church.

Eric Howard: There is parking there. What's past the church?

Lesa Howard: I think another house.

Eric Howard: Isn't there a doctor's office up the street?

Lesa Howard: Yes, just past that.

Eric Howard: And what across the street, a little bit farther there is another church. What is the name of that church, Wesleyan?

Lesa Howard: Yes.

Eric Howard: And what's kind of across the street also?

Lesa Howard: Cemetery.

Eric Howard: Cemetery?

Lesa Howard: Yes.

Eric Howard: Thank you. Does anyone else have any questions for Mrs. Howard?

Michael Filicko: So you would essentially be my neighbor, I'm 111 Bay Ave.

Lesa Howard: Essentially, yes.

Michael Filicko: Are we speaking of the building that was once occupied by Dr. Haldar?

Lesa Howard: No, no. Actually no. It's about three places south of that.

Michael Filicko: Okay.

Eric Howard: That I believe is on the other side of the, north of the church, that office that you'll referring to. Is that correct?

Lesa Howard: Yes.

Linda Rogers: Does anyone else have any questions?

Ted Kanakos: This is an, just for clarification, this is a conditional use you're seeking?

Eric Howard: Yes.

Ted Kanakos: That means it can be revisited a year from now to see how things are going?

Linda Rogers: If we were to put that as a stipulation, yes.

Ted Kanakos: Okay. So this would be quite a big investment on a conditional use if you went through all of this and built it and a year from now it didn't work out or we thought it wouldn't, you would be back renting it I assume.

Eric Howard: I understand Mr. Brady is not here but I would, I believe that legally if the way your zoning ordinances is drafted now, if we do everything as we say we are going to do that it's

not something you could always, it's a conditional use as it implies it's condition and you places conditions on it but if we comply with those conditions and we're doing what we said we would do and what you tell us what we have to do that it's not something that you can just say we change our minds.

Ted Kanakos: No. I understand that but things out of your control or our control. Anything could happen along the way. And what I'm saying if it becomes a center for drugs or something or too many accidents pulling in and out of the driveway. Things that you really don't have much control over but can still be liable for in relation to asking for permission.

Debbie Pfeil: If I can interject with the code. The definition of conditional use in the Town of Milton's code reads, "A temporary special use, a special exception use which is non-conforming in nature and which is granted by the Mayor and Town Council for a period of one year or less".

Eric Howard: That I believe that definitional section if you compare that with section 11.1, which it talks conditional uses and approvals of conditional uses that again Mr. Brady is not here, but I've never been aware of a conditional use ordinance where you can say go ahead and do it and expend the funds and you do exactly what you say your going to do and what we tell you what you have to do and if a year later we says we can change, we've changed our mind, I don't believe that's what the ordinance implies.

Debbie Pfeil: I would agree with you by some of the other clients that we have with other municipalities. It's a two part question. It's not a Planning Commission item, it's a Town Council item and it is a definition in their code, so the interpretation would have to be done by John Brady. So once again, he is not here, we're hoping he does show up tonight to rectify some of the problems we have, he was suppose to come tonight.

Eric Howard: I believe that, my understanding, is that section 11.1 was adopted after that section but I can't say that for certain.

Bob Kerr: That is not correct. The entire document was adopted at one time. As it is now, that quickly became an item that there has not been a legal interruption on but it has come up at other conditional uses.

Eric Howard: I would suggest as this Commissioner recognized, conditional uses always imply that we're going, your doing by permission and we always have the right to re-look at it. Again as I suggested, I think you're looking at it to make sure you did what you said you were going to do and you did what we told you to do, not whether we've changed our minds. That's my point. The concept that we always have the right to come and make sure that things are going as we intended, I agree with that.

Debbie Pfeil: The reason I said that was that it states Mayor and Council, not Planning Commission in the code. So it would go back to Mayor and Council once we get an interpretation, not Planning Commission.

Eric Howard: That's what separates a conditional use from a zoning change where you change the property zoning, there is a listing of uses which are a matter of right and as your right as a land owner to do that. In a conditional use, as the name implies different, you put conditions on it and the property owner has to comply with that and is subject to periodically review to make sure they are complying with that.

Ginny Weeks: Madame Chairman. I have a question of Mrs. Howard. Mrs. Howard, how large an addition are you planning on putting on? How many square feet are you adding?

Lesa Howard: I believe about 3000.

Eric Howard: Dr. Howard might be better to, but we, the total final structure will be 3200 square feet, 3290. I'm not certain how big an addition that amounts to but I know the final, the final will be 3290. Your see what we submitted in the way plans, plans drawn by Griffin Home Builders and as their name implies, Griffin Home Builders primarily builds homes. That is

constant, we have a relationship with Bud Griffin, the owner of Griffin Home Builders but we also wanted that residential look to the property. We didn't want it to have an institutional look.

Linda Rogers: Does anyone else have any questions?

Paul Howard: I'm Paul Howard.

Eric Howard: You are one of the applicants?

Paul Howard: Correct.

Eric Howard: For the Commission, could you tell us what you do for a living and how long you've been doing that?

Paul Howard: I'm an Otolaryngologist, that's an ear, nose and throat specialist. I finished my training 20 years ago. I've been in area 20 year since I finished my training.

Eric Howard: Where is your office located now?

Paul Howard: In Lewes.

Eric Howard: On Savannah Road in Lewes?

Paul Howard: Correct.

Eric Howard: How long have you been at the location you are now?

Paul Howard: Present location, just over 2 years.

Eric Howard: Do you own that property or do you rent that property?

Paul Howard: Rent.

Eric Howard: Is there anything happening with your lease at that property?

Paul Howard: Yes, my lease will be running out in April 1. In the years that I've here, I've been in, in those 20 years, I've been in a variety of circumstances professionally that is to say from a business standpoint, I've been in private practice, I've been in a partnership, I've been in a group. About 2 years ago, I left the group that I was with for a variety of reasons and at the time I rented a building which now my lease is running out.

Eric Howard: And Lesa Howard the owner of the property is your wife?

Paul Howard: Correct.

Eric Howard: Talk a few minutes if you would about the demographics of your patients, both their typical ages if there is such a thing and where most of them reside or if you have any comments you can make about that.

Paul Howard: Well ages I guess about a third pediatrics, probably a third geriatrics and a third vibrant young people like myself. The other question, we did look at some demographics when trying to decide what we were going to do when this lease expires and 60% probably maybe more, we looked at zip codes and those can be a little misleading because I think some people with Lewes zip code live almost to Cave Neck Road. But any case, roughly 60% of our population by zip code was west of Route 1. We started thinking that this would be a good thing for our patient population to maybe to west of Route 1 also. I think if we can avoid that traffic, it's a good thing for people.

Eric Howard: So 60% of your patient population is west of Route 1?

Paul Howard: By zip code. That is correct.

Eric Howard: You said approximately one third of your, I keep wanting to say clients, your patients are from what you would call geriatric.

Paul Howard: I would say so. I think the demographics, about 10% were actually from Milton zip code, we have people from Georgetown, the whole county. I deal patients from the whole county.

Eric Howard: Have you discussed with your clients, your patients at all, what if they would find it more convenient at all to go to Milton as opposed to your office on Savannah Road?

Paul Howard: Not really because it's a kind of a, no. Not specifically. I will tell you on a routine bases we hear complains about the traffic in getting to our present location.

Eric Howard: Getting across Route 1 and up Savannah Road.

Paul Howard: Specifically no. I haven't discussed it with people but we have discussed the trials and tribulations of getting where we are now.

Eric Howard: You're obviously on Savannah Road near the hospital.

Paul Howard: Right.

Eric Howard: The type of practice you have, does being near the hospital make a material difference to you?

Paul Howard: I think not. I think when I was, no and I'm not sure that it does for a lot of practices frankly but mine in particular, no. I think in the 20 years, I've called EMS to the office maybe 3 times. So it's very rare that we have that type situation where you would want to be 5 minutes from the emergency room. In those situations you would have to hope the EMS system takes care of things.

Eric Howard: In 20 years, we've had that 3 times?

Paul Howard: Probably, that's a good estimate I think.

Eric Howard: How large a staff do you have?

Paul Howard: We have 5 right now and that includes myself. I have 4 staff members.

Eric Howard: So the total including yourself, is 5?

Paul Howard: 5

Eric Howard: On average, how many patients a day do you think you see?

Paul Howard: It does depend on the day. A full day between 30 and 35 and that is 3 days a week. One day I'm in the surgical suite and then one day I have a half day. So a full day between 30 and 35.

Eric Howard: And what are your hours at the office right now?

Paul Howard: 9 to 5.

Eric Howard: When do you schedule your last patient appointment?

Paul Howard: Close to 4. Beginning at 9. You make some allowances for emergencies and such but usually the last scheduled patient is at 3:45.

Eric Howard: Do you have any weekend hours?

Paul Howard: No.

Eric Howard: You have any evening hours?

Paul Howard: No.

Eric Howard: Are you requesting as part of the conditional use application any evening or weekend hours?

Paul Howard: No I'm not. In 20 years I have never had such, but you know, patient conveniences, I would never say never if people demanded it. I think there are people that it's hard for them to get appointments from 9 to 5 because of their work and daycare and such. But in 20 years I've never had such.

Eric Howard: So the application at this period is for hours to end at 6 o'clock and you understand that if wanted to change that, we would have to come back to the Commission and the Council to amend the conditional use.

Paul Howard: Right.

Eric Howard: You under... Yes.

Paul Howard: Yes.

Eric Howard: At this point, you have no immediate plans to do that.

Paul Howard: No plans. It would be somebody else, not me.

Eric Howard: You've reviewed the site plan that was prepared.

Paul Howard: Yes.

Eric Howard: Who prepared that for you?

Paul Howard: Chuck Adams.

Eric Howard: And that's the firm of Adams Kemp?

Paul Howard: Yes.

Eric Howard: And you retained them to do that?

Paul Howard: Yes.

Eric Howard: I'm not going to go through the technical requirements, I believe Ms. Pfeil has done that and has gone through the checklist as has, I believe, Mr. Kerr. Does the site have adequate parking?

Paul Howard: I think so, yes.

Eric Howard: And you understand that before you can actually do anything you would have to get approvals from the various agencies that have regulatory authority.

Paul Howard: Correct.

Eric Howard: State Fire Marshall, Department of Transportation.

Paul Howard: Correct.

Eric Howard: And Soil and Water Conservation District.

Paul Howard: Correct.

Eric Howard: Landscaping. Just general, you realize that your final site plan is going to have an exact landscaping plan.

Paul Howard: Right.

Eric Howard: What type of landscaping were you complicating at this point?

Paul Howard: Well I would want something that looked nice. I don't intend to be in a strip mall, there are places look that available. If I wanted to be in a strip mall, I could go rent a strip mall facility. So I would be planning to make it look nice and blend with the residential area. I don't know how else I could say it.

Eric Howard: Would you put a landscape buffer between the parking area and any residential area?

Paul Howard: As required and as appropriate. As the site is laid out on one side there is lawn but any case, yes.

Eric Howard: How about lighting. What type of lighting did you have in mind?

Paul Howard: Again because we would not be having evening hours, the only lighting issue for me is in the winter time when it is dark and we're leaving work at 5:15 or 5:30 it can be dark. I want to have my employees feeling like they're safe. I don't intend to have any lights like you would see in a parking lot at Walmart but by the same token, where has to be enough lighting for people to feel safe walking to their car. Any lighting that is required by the town, we'd be willing to comply with that, to meet whatever they think is appropriate, within the understanding that I would want my employees to feel safe going to their car.

Eric Howard: I believe that's all the questions I have for Dr. Howard, if the Commission or Council has questions.

Linda Rogers: So you're intent is to no longer have your practice in Lewes and move it entirely to Milton.

Paul Howard: That is correct.

Linda Rogers: Does anyone have any questions?

Bill Brierly: When I was driving down Union Street, I saw a 510 on one house, I saw no number on the next house and I saw a 502. Is the 510 residence, 510 Union St, is that the parsonage?

Paul Howard: I believe so, yes.

Bill Brierly: Then next with the house I didn't see any number on, is that what's being referenced as the existing house here?

Paul Howard: Probably because the place has been empty for a number of months now. So the mailbox is gone.

Bill Brierly: Then right adjacent to that, there's like two tracks of cement...

Paul Howard: Correct.

Bill Brierly: So it looks like a vacant lot.

Eric Howard: That's a part of this parcel, actually. That is a driveway serving this parcel.

Bill Brierly: So 506 is, so the numbering actually jumps from 502 to 506 to 510 on this street.

Paul Howard: Well I believe Lesa's family has had that for a time. I think it might be considered a double lot at one time.

Bill Brierly: That was my impression.

Paul Howard: There's a large area of lawn which I think was a second lot.

Bill Brierly: What we have today is, numbering that goes from 502 to 506 to 510.

Paul Howard: I believe that is correct.

Bill Brierly: No 508 on the street.

Paul Howard: I believe it was considered a double lot at one time.

Eric Howard: The lot is 140 feet wide of frontage on Union St.

Ted Kanankos: Dr. Howard, you said about a third of your patients are geriatric and ...

Paul Howard: I think that's an estimate, I can't give you firm numbers on that.

Ted Kanakos: How many of these are transported through the handicap transportation service?

Paul Howard: Very few, maybe 1 or 2 a week. That's an estimate.

Ted Kanakos: On your side of the street is the parking side, the opposite side is no parking, so there would have to be some sort of curbing put in or something, just drop off and pick up otherwise parking along the street in front of your house would cause some sort of bottleneck.

Paul Howard: I would say the majority of people that are dropped off by Dart buses and the like are dropped off. They stay in the waiting room, the bus doesn't wait for them. They call if they have got a phone or our staff calls to have the bus come to pick them up.

Ted Kanakos: Do they pull into the parking lot to pick them up?

Paul Howard: Yes, that's what they do.

Ginny Weeks: At your present practice, are you in solo practice?

Paul Howard: Yes.

Ginny Weeks: So you, yourself, have 30 -35 patients a day.

Paul Howard: That is correct.

Ginny Weeks: And in this practice, there will be two doctors.

Paul Howard: No.

Ginny Weeks: The plans say doctor number two.

Paul Howard: Right, that's the design of the building, that's perhaps optimistic. In my way of thinking it would be nice but in actuality there is a shortage of people and recruitment is a problem.

Ginny Weeks: You're going to build 7 examining rooms.

Paul Howard: I have 6 now and they are utilized. The square footage is the same as my present office, I think it is better laid out but it's the same square footage. That room may be used for hearing aid dispensing, it potentially could be another physician or a physician's assistant. I will be frank with you, recruiting is not easy. Particularly in specialties where you could go to Wilmington and be on call every 10th night instead of every other night.

Ginny Weeks: So you could potentially have 70 patients a day?

Paul Howard: I think that's, no, not 70 a day. I didn't think there would be enough room for 2 to work at the level that I do now. I'm in the operating room all day, one day and I do another day where it's just a half day. No, I don't think that it would work doing that many a day.

Ginny Weeks: This office would only be opened three and a half days a week?

Paul Howard: Again as I saying, you never know what people are going to, I have always tried to accommodate patients but you have to see what people need, I wouldn't restrict myself to that but that is what I've done for 20 years.

Ginny Weeks: And you're not restricting yourself to a solo practice either.

Paul Howard: I would love to have a partner. I think recruiting is a difficult thing.

Eric Howard: Dr. Howard, make sure I understand what you are saying. If you brought in another physician, right now you spend part of your time in the hospital doing surgery, part of the time in the office. Another physician, is it fair to say that you wouldn't necessarily be seeing the same patients all the time together while one of you is in the O.R., one of you would be seeing patients in the office, that kind of thing.

Paul Howard: That is correct. As a rule.

Linda Rogers: Does anyone else have any questions?

Louise Frey: The existing building has second story. Do you plan to use the second floor for anything?

Paul Howard: For storage, business supplies and perhaps a coffee spot for employees to sit and have coffee. I believe that is on the plans that were submitted. It is not for patients. And getting back the previous question about the square footage, the addition would be, I would have to look at the plans, I think around 2000 roughly. I think the present building is around 1600 to 1700, I would have to look at the plans. We're going to use the building that is there on the first floor for patients care, the waiting area, the business area, a bathroom. The upstairs would strictly be for storage, there wouldn't be any patient use up there.

Linda Rogers: Does anyone else have any questions?

Michael Filicko: Linda, I have a comment, if I may. First of all, I want the Commission and the public to know that this will absolutely have any bearing on how I vote on this. Five years ago, Dr. Howard found the source of my cancer and I was treated at the University of Maryland by Dr. Kevin Cullan and Dr. Malhunsunban. Now since that time, in speaking of Dr. Howard's character, any issue, any problem that I may have had and for those of you who have ever been faced with that "C" word, it is a very, very scary thing. I would call Dr. Howard's office and say that I am having a problem, I'm having pain, I'm seen that day no matter how busy he may be.

Debbie Pfeil: I'm sorry if I may interrupt. I apologize for interrupting you. I think that a conflict of interest needs to be determined by your town attorney when he arrives.

Michael Filicko: Okay, Debbie.

Debbie Pfeil: Based on what you have said. What you would have to say is that you may have a potential conflict of interest. You would not have to provide details during the public hearing portion but if you feel there is a potential conflict of interest, we do need to bring that up on Mr. Brady's list tonight.

Michael Filicko: As I said, Debbie.

Debbie Pfeil: Thank you bringing that up.

Michael Filicko: It will not have any bearing on my vote because I can go to Lewes just as easy as I could go to Milton. I'm just speaking of Dr. Howard's patient care, that's all.

That's all I wanted to bring up to the public.

Debbie Pfeil: We appreciate you bringing up a potential conflict of interest and we will research that when Mr. Brady gets on board. Thank you.

Linda Rogers: Does anyone else have any questions? Are you completed with your presentation?

Eric Howard: We are completed with our presentation, of course with the submission of the plans and the drawings that the Commission already has.

Linda Rogers: Does anyone have any questions of Dr. Howard?

Debbie Pfeil: Madame, Chairwoman, if we could take about 5 minutes on this side just to get Mr. Brady caught up while you start the rest of your agenda.

Michael Filicko: Debbie, would you please talk to Mr. Brady and see if I can make a decision?

Debbie Pfeil: I will do that, you're number 4 on the list.

Linda Rogers: Is there anyone else present who would like to speak in reference to this application?

Mary Ann Lester: I think most of us would welcome another doctor, more medical in this town. However, I think that what we are seeing here is not just the same thing as a person with residence who wants to have a little doctor's office on the side. If you really look at the plans, it's huge, it's a medical complex, at least it looks a little more like the one that is a couple of blocks down the street. It's going to require a lot of new building and a big parking lot for a number of parking spaces, I think it looked like at was 19 parking spaces. And to me as a person who just drives into our town everyday, it looks like the beginnings of another Savannah Road and I know from people in Lewes, that does have a detrimental impact. I'm sure that the people don't intend to have a detrimental impact but it does and it has had a detrimental impact on all the property along Savannah Road and even abutting Savannah Road and behind and across the street and it has hurt the property values. So that is something that we should consider. As much as I think we would welcome new doctors, there is an existing medical complex right down the road. I would suggest that these, perhaps this residential property should be sold and then they could go buy one of the mini commercial property or rent or buy one all around. I just think to make an exception is just the beginning of a change along the entrance to our town and we in a minute just have another Savannah Road. Thanks.

Daria Horn (502 Union St): Most of my concerns are because I live at that address right next door, have lived there since 1984 and most of them are practical questions which I don't know if this is the appropriate time to back them up. I don't have an objection to a business next door to be honest with you. I've been in business, sole proprietor myself in Lewes, for many years. The questions I have are relevant as she just brought up, the appearance visually, if it retains a residential appearance, I think that is useful. Sort of a side note, way back in 1980 when I first came through the town, was on a Trailway's bus, fell in love with the town because just driving right down Route 5, Union Street, you felt like you were in a time warp. It is very historical and I think that part of Milton is so attractive that it really needs to be kept as a priority whether it turns into a business or not, just in visuals. Other concerns I have, for example, lighting, if you have bright parking lights. My house, as you can see on the plans, the edge of my house is right on the property because that's the way it was done back then when it was a farm house. Their parking lot would abut the side of my house. There's about 3 feet there between the edge of their parking lot and my house. Right now, just with that small paved area, the drainage is so bad that the side of my house is sinking, that cement sort of u-turn that was there hasn't been there the whole time the house has. Just that small cement u-turn they've got, the drainage has become ridiculous. A lot of these different kinds of things, barriers, visual barriers because the edge of my house is right on the property line. I would be looking into the parking lot. Does the town require them to have a fence or not?

If there is a fence that means, if I open my window, I look right at a fence. There is all these different things that I don't know what the town controls or can control, what in terms of your board here can make a requirement for conditional use. Just listening to the previous situation you were dealing with the runoff. Would the town require that this parking lot be paved? And it covers most of the property. If that is a requirement, what is done with water runoff that is so bad on my property just with that small little concrete area. A conditional use, I'm still not clear

on that. Is that sort of a way to back door a zoning change or what is the difference between a conditional use and zoning change?

Linda Rogers: A zoning change would allow an entire list of different uses that would be permitted. So for example, if they changed it to C1, it could become, I just picking stuff, it might become a bakery, it could become a dry cleaners, there is a lot of things that would automatically be permitted to go on that parcel. A conditional use simply means it would be strictly limited to a doctor's office and nothing else could go there without having another public hearing to inform everyone as to what the change of use would be. If for some reasons the doctor's office were allowed to go there and five years down the road he decided to move his practice back to Lewes, it couldn't be changed to a grocery store. They would have to come back for a public hearing, it could only be a medical/doctors office.

Daria Horn: Once it becomes a doctor's office, there's no control or the ability of the town to control how many doctors, what the hours are, how many patients, etc. Is that true?

Linda Rogers: Yes. We can put conditions on as to hours, we can put a condition on to say no more than two physicians, you can put different conditions on an approval. So, yes those things can be put on at the time it is granted and should there be some type of change then you would have to reapply.

Daria Horn: Okay. Do I as the next door neighbor, if he wants to pave the parking lot in impermeable surface which I know is going to cause problems, do I have any sort of recourse as the direct neighbor?

Linda Rogers: He would have to comply with site plan requirements, which means, he would have to manage his storm water problem on his property. He wouldn't be allowed to drain onto yours. If you have issues with that, the town and it's enforcement officer would have to go him and say your draining on to their property and it would have to be changed. So there is recourse to that. If your having a problem now with something that has been added to the property, you need to contact the town office.

Daria Horn: If one whole property is paved over, how could they drain out of something that's paved?

Linda Rogers: The engineers have to develop a drainage plan, have drains put in.

Dean Sherman: Put catch basins in to catch all the water and pipe it out.

Daria Horn: I see what you're saying.

Dean Sherman: You're actually at an advantage. If they do something on that property, you may actually get your problem corrected.

Daria Horn: That's true. I'm just asking questions because they're concerns of mine. Does the town require any sort of barriers between because it's a business and residential?

Linda Rogers: We can require.

Daria Horn: But you didn't need to.

Linda Rogers: I don't think you necessarily have to because it's not commercial. I know there is a requirement between commercial and residential but when it's all going to remain residential zoning, it can be required and it can be a natural barrier versus a fence barrier. It can be a stipulation if the board feels there's necessarily one needs to be put there.

Michael Filicko: What we generally try to do in place of a actual fence, we try to remedy the solution with attractive landscaping.

Daria Horn: With regards to that, may I ask them a question?

Linda Rogers: What is your question?

Daria Horn: I looked at this yesterday in the Town Hall. It says a gazebo in the back corner. What exactly is that?

Linda Rogers: Do you want to tell her what kind of gazebo you intend to put there?

Paul Howard: Our thoughts were that we might put a gazebo when all the rotten trees were, that were hanging over your barn. Right in that corner is what we were thinking.

Daria Horn: I hope that visually the town takes that into consideration. To me it is irrelevant whether it's a residence or a business. Visually I think really for the town to keep its' historical character and I don't know if you have any say over that, in terms of the conditional use but I would highly recommend that.

Dean Sherman: As the closest neighbor with the potential to be the most effective by this, you would be in support of this with certain conditions or you would be opposed?

Daria Horn: To be honest with you, I'm right on the fence. There are some many pros and cons that I still don't know about in terms of what will be done, what can be limited, what's allowed, what's not allowed. I don't have enough information to actually answer that honestly. Like I said, I don't have a problem with a business being there, it's the specific that I need to find out more about and what's allowed and consider it, as you were with the previous project. Whether you have a permanent surface area or one that is absorbent basically. Designs like that are important but to because of that street, like she was mentioning with Savannah Road, you have all those residences becoming businesses and I think you should realize to that in terms of this one decision, this one little place, it's already become, with what's going on, on that street, a lot of it is already business if you can consider a church, a business but you know what I mean. So in terms of the future of the town, there's not a lot of area in town to expand for business. Maybe that is the direction you want to go and not conditional use but in terms of future town planning.

Do you want the northern section of the town to become more business oriented and the southern end to be more residential. This one little sort of chink in the notch here will effect how that precedes. So it's not just this one little business, I think you just should all be aware of that in terms of future effects of what happens on Union Street. The other thing is, Union Street is Route 5 and can telling you having lived there for 20 years, even though the speed limit is 25 miles per hour, the more you got going the faster the people are going on that street. So even though it is very narrow and I heard someone say parking was allowed on that side of the street. I can tell you that I park in front of my house every now and then, so I can actually get in my front door but I always have to pull off the sidewalk because that street is so narrow. It does, it becomes an obstacle course for vehicles because there isn't really enough width on the street to allow for any on street parking because it is just so narrow. Thank you for your time.

Ginny Weeks: Madame Chairman, I have a question if I may for the doctor.

Linda Rogers: Lets finish with the public comments first. Is there anyone else who would like to make a comment?

James Welu: Just in listening to the two closest neighbors, I'm reminded of a property I had in Silver Springs, Maryland where a church moved two doors down into a residence and we had much of the same problem, it just didn't fit within the community but there's nothing you can do with the church versus a private enterprise, as a medical office. One of the problem was, the visual affect on the street and there's comments about what is going on with Savannah Road, as house after house is sold or listing as future professional use and that type of thing, I welcome the doctor into town, when I saw this listed, I thought, why didn't they buy the medical building that was for sale, like two blocks or a block away. I understand that they've owned this property for some time so that's an issue there. I thoughts are, in terms of putting conditions on the conditional use if you go in that direction, would be somehow to shield the parking area with six foot privacy fencing. It would at least minimum some of general affect on the community. Now the woman that lives next door, she's going to have a six foot privacy right next to her window. That's maybe not a good solution. If they would move it in, give her almost a ten foot side yard

setback from her house, as far as the parking goes, I think might be somewhat helpful and if they can some shrubbery planting on her side of their fence to kind of soften the affect that it could have some positive affect as far as the immediate neighbor. I fear, I welcome any business owner who wants to operate a business out of their house in Milton if they live in the house, which goes back to the 1830's, 40's, 50's, where people had their own businesses in their homes. I'm a little bit concerned, not the affect of this one request, but of continuing requests that could come on our main streets and even some of our side streets. One other comment I would like to make, I'm not sure who prepares these notices that goes on the bulletin board and into the newspapers but it would be helpful if something on this order read a conditional use for a residential dwelling not located on Union Street but located at 506 Union Street. I know legally you have to put in the legal parcel number, but for citizens it would be helpful if the address were specifically put in the notice so people driving down the street could say it's this property. They don't have to go searching to go figure out where the parcel is. It's just a recommendation. Thank you.

Linda Rogers: Does anyone else like to make a comment?

Carol Bruce: 203 Collins Street. I just wanted to say that I'm sure the Board is going to, the commissioners are going to have as I would have if I were still sitting next to Dean, a real concern with setting a precedence on conditional use. I certainly agree that the look of the Town is still probably biggest selling point in terms of drawing businesses, etc., but I also want to say as one of Dr. Howard's geriatric patient's from Milton that we could not have a better doctor here. I think the way he runs his practice, his knowledge, my family and I've all put ourselves in his very capable hands. Thank you.

Paul Howard: Thank you Carol.

Linda Rogers: Anyone else?

Truitt Jefferson: I own some properties on Union Street and they are currently rental properties and I have some vacant land. I think Dr. Howard's office would be a nice addition to Union Street and I have no problems with it. I think he'll bring people to Town, bring employment to Town and if he has 35 patients, 3 days a week, that's maybe 5000 people coming to Town that we don't have now and we need people if businesses are to go. I think we ought to take hat's off to Dr. Wagner and his group too because they are working hard on that theatre and that's opened up downtown Milton.

Linda Rogers: Thank you. Does anyone else like to make a comment?

Nancy Davis: I have been asked to deliver a letter from a person who could not attend the meeting tonight. Do you want me to read the letter or just...

Linda Rogers: That's fine.

Nancy Davis: In a sealed envelope. "To the Planning & Zoning Commission, Town of Milton, from Stephanie K. Parker at 113 Broad Street, Milton. RE: Application for Conditional Use and Preliminary approval for change of use at Union Street property. I strongly oppose this application. The property in question is located within a residential area. Any change of use or zoning of this property is not in keeping with the other properties adjacent to and in that same area. Allowing what is a commercial use for this property could detrimentally affect the other residential properties in that area. I believe that part of the purpose in establishing the Town Centre district several years ago was to stop the spot commercial zoning that had been occurring in Milton. Granting this application will start that spot zoning process again. You will also be setting a precedent for every other property located on Union Street between the Town Centre district and Route 16. This entire section of Milton could then change from an historical residential area to commercial use. Such a precedent in change in use would cause a drastic

change to the character of our Town. I hope that you will take this into consideration when making your decision. Thank you. Stephanie.”

Linda Rogers: Does anyone have a comment they would like to make?

Eric Howard: I’m not sure what the protocol is. I did want, if I’m permitted, to maybe take 1 to 2 minutes to just respond to some of the comments that were addressed.

Debbie Pfeil: You had 25 minutes. No, I’m just joking.

Eric Howard: Just a couple of comments. The size of the building...there was a comment that it is a huge complex and we all see the size houses that are being built today and we all see the Victorian style houses are in Milton and the size of the house is 3200 s.f., the size of the building. I would suggest that isn’t a huge property; that’s a fairly modest average. If you go down Union Street, and look at the size of the Victorian style houses there, I didn’t survey them, but there are certainly a large number of them that are significantly larger than 3200 s.f., so I don’t...plans always look big on a big sheet like that but I suggested that 3200 s.f. for a two story structure is not a significantly large structure. And it’s not, it doesn’t look like the structures you would see on Savannah Road. Savannah Road has been re-zoned to far professional offices and that is why you see buildings going up and down Savannah Road that look like professional buildings. They look like office buildings because that’s what the county, in some instances, and the Town, in some instances, had decided that’s what they want that area to be used for so that they look like professional buildings and there’s no attempt to make them look like anything else. This property, as you see from the plans, it looks like a house. It would be a use consistent with other uses in the area. As commissioner Sherman noted, the drainage issue, that paved area was put down years ago, I don’t know the exact date, but I would venture to guess it was used for residential use so you wouldn’t have to go through storm water management, but we are going to have to go through storm water management now. Speaking with Mr. Adams, and in all likelihood, we are going to have to put some underground water storage, so the drainage problem there, in fact, is going to be improved if we do this. The parking, as Mr. Adams designed the sight, tried to put as much parking as possible in the rear; that’s where you see most of the parking, behind the building where the area for the church is; their recreational area back there next to that area. The 19 parking spaces, I think the Town Code required at least 17, so we could possibly cut back a couple of the space and only go with the 17, but we have 19 on the plans to make sure we had enough. But again, we did try to keep the majority of the parking in the rear of the property next to the Grace church recreational area. The buffering, we are willing to do whatever you say is appropriate be it fencing; our thought was that natural landscaping would look better but we aren’t opposed to fencing if that is the preference. We think it looks better to have natural landscaping, that’s all I’ll say about that. We certainly would, if the condition it has to be something other than that we’d do it, but we’d prefer the natural landscaping. Thank you.

Linda Rogers: Apparently there was one letter faxed to the Town Hall today in reference to this application. It’s addressed to Planning and Zoning. (A letter from Lynn Ecklund in opposition to this application was read into record with a copy on file.)

Paul Howard: With regards to the trees that have been taken down, they were rotting. There was one tree out of the seven or eight that was not rotting. And frankly, I was worried that they would fall on the neighbors property. A number of outbuildings, there are several, and the trees were literally hanging over them, at least half the trees. The other trees were rotting and had other issues like berries that put stains in your shoes every time you stepped on them, so I did take exception to the fact that we just cut these trees in a clear cut and we do intend to put in some landscaping that would be more appropriate than a bunch of scraggly dead trees, frankly. With regards to the size of the building I would reiterate what my brother said that this is basically the same size building that I have now. I don’t think the suggestion we look into the

property down the street where Dr. Haldar was. That property was a third of the size of what my present office is. It would be totally inadequate for the needs of a practice such as mine. It would not have worked. It seems there was something else that I wanted to mention...

Bill Brierly: Are you going to live in the building?

Paul Howard: Yes, I did want to address that. No, I'm not. You know, Dr. Stone from the Donna Reid Show, that's just not the way it is anymore. I don't know a doctor that lives in their office. Now my dad was a doctor in Ocean View and his office was across the street. Even he didn't live in his office. It's just not done anymore; maybe it's inappropriate to live in a medical facility. But in any case, no I do not intend to. My understanding, I'm not an attorney, of a conditional use is you're asking for that specific use. Somebody correct me if I'm wrong. I don't think I could convert this to a grocery store for that matter, maybe another professional office that wasn't a medical practice without getting a conditional approval again, so the intent is strictly a medical practice, but no, I do not intend to live in it.

Linda Rogers: Thank you.

Virginia Weeks: Dr. Howard, I have a question please. How are you going to dispose of your medical waste?

Paul Howard: Well, frankly we have very little in my practice that has to go through one those medical types. We have canisters in the wall for hazardous waste. We also have cans in the rooms for hazardous waste, but frankly there is very little of it.

Virginia Weeks: How does that leave the property?

Paul Howard: My office manager would have to answer the name of the company, but there is a company that comes and picks it up. The rest is just normal office types of things.

Virginia Weeks: Thank you.

Linda Rogers: Does anyone else have any questions. If not, we'll entertain a motion to close this public hearing.

Michael Filicko: Linda, let me say something. This is to Debbie, Bob and Mr. Brady. I don't know if you have made a decision yet, but let me just say something. In living here, in Sussex County 23 years, it's...one has to become familiar with the people and the businesses. I could have when Dr. Wagner spoke, I remember when Karen Duffield came before the Town Council and just before the Theatre was built and made a passionate moving plea to just that moved everyone and what Karen did, and what Dr. Wagner has done, I could say the same things about them as I did Dr. Howard.

Debbie Pfeil: Commissioner, what is your question? I didn't get the question yet.

Michael Filicko: Well the question is...

Debbie Pfeil: If you have to recuse yourself from conflict of interest?

Michael Filicko: Yes.

Debbie Pfeil: And the answer is?

John Brady: On the issue of conflict of interest, the commissioner first has to determine whether or not there is a personal interest involved. For example, last night with regard to one of the issues before, there was a commissioner who lived adjacent to the property. That commissioner and I discussed the issue before the meeting and that commissioner chose not to attend the meeting because she believed it would have been a conflict of interest and it could be perceived that, because she lived adjacent to the property, that that would have been an issue and that could have been an issue that could have been raised by an applicant at the hearing or on appeal to the Town Council or on appeal to Superior Court. The issue as to whether or not to recuse is a personal decision if the commissioner has had personal dealings with the applicant and that personal dealings have been within the last year or so then under the Conflict of Interest, Chapter 58 of Title 29, and the guidelines issued by the Public Integrity Commission, it would be my

recommendation that the commissioner disclose that and then make a personal decision whether or not they should participate in the discussion. The discussion of the matter starts when the matter after the public hearing comes before the commission. If the commissioner is a personal decision whether to recuse, the standard of review is to use discretion and there have been several court cases where if there were personal dealings and personal interests that were not disclosed, and there is an appearance of impropriety, then the safest course of action is for the commissioner to announce the potential issue and recuse himself. I'm not going to tell you what to do. I'm going to tell you what the law is and it's your decision.

Michael Filicko: All I can say in the years that I've served on this committee, I have put the Town of Milton as my top priority. I do not have a personal friendship with Dr. Howard or Dr. Wagner, so if I would vote, it would be based on the well-being of the Town. And just because Dr. Wagner is my physician and has treated me, with the, just his care of me as a cancer patient, I can't speak, I can only speak highly of me. But that's as a physician, and just like if I was Dr. Wagner's patient or Karen Duffield, who as I said earlier, her moving passionate plea to start the theatre, it's all related I believe in my eyes. And I am not going to look at Dr. Howard in a personal way. I'm sitting here as a member of the commissioner and I am not going to vote based upon our patient/physician relationship.

Linda Rogers: So you do not choose to recuse yourself, you choose to participate?

Michael Filicko: I would like to.

Linda Rogers: Okay, so you are going to participate in the votes, correct?

Michael Filicko: Yes Ma'am.

Linda Rogers: Okay. Do we have a motion to close this public hearing?

Dean Sherman: So moved.

Linda Rogers: Is there a second.

Virginia Weeks: Second.

Linda Rogers: Okay. We have a motion and a second to close this public hearing all in Favor say "Aye". Opposed – None. Motion carried.

Public Hearing closed at 9:03 p.m.

Linda Rogers called the meeting to order at 9:04 p.m.

Additions/Corrections to Agenda

Linda Rogers: Are there any additions or corrections to the agenda? If not, I will take a motion to proceed with the agenda as submitted.

Dean Sherman: So moved.

Bill Brierly: Second

Linda Rogers: We have a motion and a second to proceed with the agenda as presented. All in Favor say "Aye". Opposed – None. Motion carried.

Approval of Minutes

February 1, 2007

Linda Rogers: Would someone like to make a motion in reference to these minutes.

Louise Frey: I make a motion to approve the minutes of February 1st as submitted.

Michael Filicko: Second.

Linda Rogers: We have a motion and a second to approve the minutes of February 1st. All in Favor say "Aye". Opposed – None. Motion carried.

May 14, 2007 Annexation Meeting

Louise Frey: I make a motion to approve the minutes as submitted of the Annexation Meeting.

Virginia Weeks: I second it.

Linda Rogers: We have a motion and a second to approve the minutes of the Annexation Meeting. All in Favor say "Aye". Opposed – None. Motion carried.

Linda Rogers: The next item on the agenda is the review of the preliminary site plan for the parking lot for the Milton Development Corporation. Mr. Kerr, Debbie, either one of you two.
Bob Kerr: As requested, we reviewed the preliminary site plan. The Theatre occupies a site that occupies an area of 14,900 s.f.. The property and adjacent properties are zoned in the Town Centre district and the preliminary site plan proposes to add 9 parking spaces and a navy wall bulkhead. No details have been provided for my review on the navy wall bulkhead and I learned this evening that a building permit has already been issued, but I was not aware of that in doing this review.

Dean Sherman: Wouldn't the Corp of Engineers supersede anything in Town? Wouldn't they have a say about that anyway?

Bob Kerr: They would but oftentimes on...Yes, they would supersede...

Dean Sherman: Thank you very much.

Virginia Weeks: Dean, would you repeat that? You were speaking that way and I didn't hear the question.

Dean Sherman: I was saying the Corp of Engineers specifications and regulations and approvals would supersede the Town of Milton's authority on that.

Virginia Weeks: Thank you.

Bob Kerr: There are no details or elevations provided to determine anything about the wall. The proposed parking area is shown to be constructed of crush and run, which is a mixture of mostly small crushed stone in a matrix of crushed limestone. Your Section 7.2.6 requires parking areas to be paved with a suitable all-weather, dust-free surface. The Section also requires you to curbing or wheel stops to be provided to keep the cars from going too far. The fourth item, no information has been provided on the difference in elevation between the top of the proposed navy wall and the natural landscape of the area, so we don't know if a railing or fence should be required along that area to keep someone from falling over the side. Item 5, no information on proposed lighting for the parking area has been provided. Number 6, there's no accommodation of storm water management provided on the preliminary site plan. It is less than the 5000 s.f. of disturbed area on the property although if improvements are made on Front Street, then the area would be greater than 5000 s.f.; this would require Sussex Conservation district approval. There's some landscaping shown but there's no details whether it's a small bush, big bush, tree, shrub or whatever. There's no details on the amount of clearing or number of trees that might need to be removed from the area. Number 8, the proposed 15' wide extension to Front Street is not shown to be paved; there's no details on what's going to happen to it. It's also not clear on the drawing who owns that portion of Front street; whether it is dedicated to the Town and a Town-owned maintained street or whether it's....the ownership of the property is in question. There's buildings on the drawing that are identified as dwellings. I believe all the buildings in that area are commercial except for the post house. A dwelling is considered a residence; these are not residences. The parking lot shows curbing to be along a portion of Front Street. It's recommended curbing be provided long the entire property except for the driveway; there's a landscaped area that's shown but it's relatively narrow and without the curb extending along that

area there's nothing to prevent somebody from just driving across 2 – 3 ft of grass. The limits of the wetlands aren't shown on the drawings. They were provided on an 8-1/2 x 11 exhibit. There's no indication on how much of the wetlands are being filled. And the flood elevations aren't shown on the drawing so we don't know where or how the flood plane regulations affect this portion of the property. And copies of the permits from Army Corp of Engineers or DNREC should be submitted prior to final acceptance of the site plan. If you have any questions I will be pleased to answer them.

Linda Rogers: Does anyone have any questions for Mr. Kerr?

Ted Kanakos: Yes. What is the flood plane elevations, how does that tie into all of that?

Bob Kerr: Typically in the Town of Milton the flood elevation is elevation 9. There are maps prepared that show areas delineated as flood planes. They do not always match up with the elevations but there will be an area shown. Most of downtown Milton is within the 100-year flood plane.

Ted Kanakos: What would have to be addressed on this particular number 12 if the flood plane elevation is not shown on the drawing? And if it is shown, what are the complications that could...?

Bob Kerr: There may be no complications. There's a requirement in the zoning ordinance that the flood plane that the 100-year flood plane line be shown on all site plans if it is within a flood plane.

Linda Rogers: Does anyone else have any questions for Mr. Kerr? Or comments?

Debbie Pfeil: I have some of the same comments of Mr. Kerr but I won't be redundant on the same comments if you would oblige me that. As far as, I do have a typo on page 2 of 3 which I need to let you know under parking. Item 2D. I put the applicants proposing to paint the individual parking spaces. We further determined it's hard to paint crush and run. So I wanted to make that comment known for you. We also have a determination as far as the parking layout from the Town Solicitor. I also have a conflict in the Code on landscaping as far as the buffering. It's going to be on page 3, line e, f, & g. The landscaping requires at least 10% of the area of lot usable for off-street parking shall be devoted to landscaping - lawn, trees, shrubs, other material – as part of final submission. On Item G, Section 7.14, Buffer Landscape Requirements, the particular type of buffer and landscaping shall be determined by the planning commission. The applicant has provided landscaping on the plan and we need further direction from the commission during the preliminary process. The applicant will need to further clarify if they have met the planting standards of Section 7.14.3 as it's not stated on the application. So on my recommendation on the landscaping, I would recommend that they need to address this and insure that they've addressed this prior to final submittal if they receive preliminary from commission. And the rest of the comments, the only one that I have as a determination is that it is recommended that the Town review any off-site improvements that may need to be completed at the expense of the developer, such as the extension of curbing and paving for Front Street to the proposed driveway. I think the Town needs to research, if they are going to take that responsibility on which I understand they usually don't for development to extend Front Street; what type of service will be from the cutoff from Front Street to the entrance point of their driveway. I think that needs to be further reviewed prior to final submittal as well for off-site improvement.

Linda Rogers: Have we determined who's the street is? Is that what you are talking about?

Debbie Pfeil: Actually Mr. Brady is going to address that and the dust-free surface.

John Brady: According to the County Tax Map, the map delineates Front Street as a separate road between Parcel 72 and Parcel 74. I cannot determinate from the materials here tonight who it is owned by. If it is owned by the Town, if it is owned by the County or it's just there. With

regard to the dust-free surface, that is under 7.2.6 where it has to be an all-weather, dust-free surface; exception of those for single family residence. That exception will not qualify. However, by looking at the map, this parcel is located in Town Centre. Because it's located in Town Centre, under 7.2.5, off-street parking requirements may be waived in whole or part upon a finding of the planning and zoning commission that sub # 3, the area in question is located within the Town Centre district.

Linda Rogers: So your answer is what?

Dean Sherman: So you are saying that not only can we waive the number of spaces but we can waive the specification? That's what I hear.

John Brady: What I am saying is because of the number of spaces you can waive it because it is in the Town Centre district. The definitions do not specifically define in the zoning code the word "requirement" of the off-street parking. To what has been defined has been what spaces are, what commercial lots are, what private lots are. But in reality, in looking at the Code the way it exists right now, you have the power to waive that requirement and if they do put a parking lot in, they can't put crush or rock in. But the spaces can be waived because it is in Town Centre.

Linda Rogers: So another words they cannot put...

John Brady: They cannot put crush or rock; they can't make the parking lot crush or rock.

Linda Rogers: It has to be blacktop?

John Brady: It would have to be blacktop. The problem is, they are not required. If you decide to waive the off-street parking waiver, you can waive it under the finding that it is in the Town Centre district. When we talked earlier, you heard in the reports from the Town Planner we have some competing Code sections and you have to give precedence over the ones that you give precedence over.

Linda Rogers: So I'm like confused. Are we reviewing something for a parking lot or aren't we?

John Brady: They have asked for a parking lot. The issue, you cannot approve what they've asked for. However, you can waive them asking for a parking lot by finding it is in the Town Centre.

Debbie Pfeil: That's not waiving the use but the type surface?

John Brady: Waiving the type of surface.

Virginia Weeks: We have already waived the parking for them, because they are up and existing and there is no parking. This parking lot is at their request. So if they want this parking lot, we can give it to them but we can only give it to them with a paved, dust-free surface, right?

John Brady: That is what the ordinance says.

Virginia Weeks: Thank you.

Michael Filicko: So it has to be a paved, dust-free surface. We cannot waive that requirement? Even though it would be detrimental to the environment?

John Brady: It could be hot mix, it could be concrete, it could be brick. It could be surface tile, it just can't be crush or rock, because under the Code is not dust free.

Michael Filicko: So is there some thing dust-free that's pervious, is my question?

Dean Sherman: Yes, pavers or something. Karen, Dr. Wagner, are you okay with pavers?

Karen?: Yes

Dr. Wagner: Pavers, yes, or something we can afford. I don't know how expensive the pavers are.

Dean Sherman: We just got to get through this Code. This Code is murder.

Dr. Wagner: I don't think limestone is dust-free is it? Nor is clam shell. Anyway, we could make it of a dust-free surface of some type and then determine with our final approval what

that's going to be, because we still have to do the wall and get all that done and then we can look at the financing. We know what the blacktop is going to cost us, so we may have to go to that, because of cost. But if not, then we can look at other dust-free applications to use and then come back to you as a final for the approval with that. We can live with that.

Ted Kanakos: Doctor, you had mentioned that in the final analysis you wanted it paved.

Dr. Wagner: Eventually yes, but I still have a lot of building to do back there and I don't want to rip it up and

Ted Kanakos: Part pavers, part blacktop?

Dr. Wagner: Maybe, but it will be a dust-free surface, whatever. That we are going to have to live with, obviously if that is what we have to live with.

Dean Sherman: Dr. Wagner, this is such a small thing that ripping up the paving; it's going to be nothing compared to the cost of the pavers. You'd be better off just to waste the paving, waste the hot mix than to spring for the pavers. I guess we need to get back to what you were working in with DNREC or Corp of Engineers. They don't want...

Dr. Wagner: No, we can, they didn't want originally then we went back to them, they said it was okay. It wouldn't violate the Corp of Engineers thing. So we can use blacktop back there if we have to and that's fine. Again, we'll bring back a dust free top, you know, whatever it's going to be. Alright?

Dean Sherman: Alright, that's good.

Linda Rogers: Does anyone else have any questions?

Virginia Weeks: Madame Chairman, I have a question for Mr. Brady. Mr. Brady, on this site plan, I'm concerned that on the extension to Front Street, it says "proposed 15' wide extension to road for ingress, regress and digress in favor of parcel 112". I'm concerned about the fact that it says in favor of parcel 112 and doesn't reference for example the parcel on the other side of the street.

John Brady: Parcel 112 is the theatre parcel. Actually the running parcels to that road are parcel 74 & 72. What it is, is extending it to give access back to 112 because the rear of 112 is what they're trying to get access to, if I'm reading the site plan correct.

Virginia Weeks: Correct. My point is that if this is a recorded site plan, does it give solo favor to parcel 112 or should we add the other parcels to this.

John Brady: It should not give solo access to 112 because if it is, the way I'm reading it, as recorded on the tax map and the deed descriptions, it's already giving access back to the back part of the property and that it's showing as a delineated road on the Sussex County map. It may be a state maintained road, maybe a county road, maybe a town road, and maybe just a road that's there, that no one wants to maintain. But it's showing as a road, but when the final plan comes in, it should not say in favor of 112.

Virginia Weeks: Another thing I had is that at present, there's public parking on that road because it is a public road. When Irish Eyes is busy or there's a function downtown, people frequently park along there. How are we going to address that because that parking will be lost and do we need to, can we do that? The ingress and the regress into their parking lot will not allow cars to park there.

John Brady: That technically would be an enforcement issue not before you tonight. That would be within the police department's purview; they're the ones who enforce parking in the town.

Virginia Weeks: Okay, thank you.

Linda Rogers: Does anyone else have any questions or comments?

Dean Sherman: They could be parked there illegally now in what you're saying?

John Brady: Yes, they could.

Virginia Weeks: People use it all the time, I assume it's legal. It doesn't say "no parking".

Michael Filicko: It would seem to me that there has to be a pervious surface to the parking lot to protect the environment as Mr. Welu had said earlier.

Linda Rogers: But we don't have a choice by our ordinance.

Michael Filicko: We do. There is pervious that is dust free is there not?

Debbie Pfeil: If I may interject. Your, the applicant has stated that they are willing to come up with a dust free surface for the application to be determined between preliminary and final that you'd be reviewed on. And they are required to have a dust free surface, does that address that concern to the commission?

Michael Filicko: As long as it's something that's pervious.

Debbie Pfeil: The dust paved.... What does it say right out of the code?

John Brady: Dust suitable all weather dust free surface.

Debbie Pfeil: Paved, dust free surface.

Dr. Wagner: Again, I think we'll try to as we do the final plan, we're going to have to find ways of making that area pervious; we're not sure how it's going to be. But right now, we need to get over this hurdle and that's to get a dust free surface we can all live with, okay? And we will try our best to make it pervious, okay? Alright.

Michael Filicko: Okay.

Linda Rogers: Does anyone else have any questions or comments? Anyone ready to make a motion of some type?

Virginia Weeks: I would like to make a motion. I'd like to make a motion that we grant preliminary site approval and that we require them to come back for final site approval with the following items: that it shows the curbing and the wheel stops; that there's a storm water management plan; that we have more details on the landscaping, a landscaping plan; that "in favor of parcel 112" be removed from the site plan, the wording; that we have an assurance that there's a deeded right-of-way to the proposed driveway for parcel A; that the flood plane line be shown; and that they show us what kind of curbing they are going to put along Front Street and how much of it. Does anyone else at this point have anything they think needed added?

Linda Rogers: Are there any other stipulations you feel needed to be added to the motion?

Dean Sherman: Did you get everything on the engineers report?

Virginia Weeks: And anything else that is on the engineers report.

Bill Brierly: That's what I would, too, is anything else on the engineers report should also be included on the next site plan.

Dean Sherman: The 12 points of concern along with the dust free driveway issue.

Virginia Weeks: Actually, I would like to request that they bring us a sample of what they are going to put down or planning to put down, because I don't want to have a final, if we can do that, site... Can they have, I'm concerned that we approve it at final and that later the surface be changed in what they presented us.

Debbie Pfeil: Are you asking me that? I would say that you need to trust your town engineer on his recommendation of a surface, because they can bring something in here and I don't think, I'm not sure about the background of the committee, but I don't know if anybody's engineers or knows about the design is good or bad, but I would trust your recommendation from your consultant.

Virginia Weeks: For this final site plan, I want the engineers approval of what that....

Debbie Pfeil: Yes, you will have another letter from the engineer and myself for final.

Virginia Weeks: Thank you.

Linda Rogers: Okay, we have a motion with stipulations, is there a second?

Dean Sherman: I second it.

Linda Rogers: We have a motion and a second all in favor...role call vote.

Ted Kanakos: Yes
Bill Brierly: Yes
Dan Sherman: Yes
Linda Rogers: Yes
Michael Filicko: Yes
Louise Frey: Yes
Virginia Weeks: Yes

Linda Rogers: All in favor of the motion. Motion carried.

Linda Rogers: The next item on the agenda for review is the application for the Conditional Use for the physician's office of Lesa and Paul Howard, located on Union Street. Bob, would you like to read your comments please?

Bob Kerr: As requested, we've reviewed the site plan for 506 Union Street. There were also architectural drawings submitted in addition to the site plan. The property is presently zoned R-1. As we discussed, a medical office is not allowed in a single family, residential use district and thus the request for Conditional Use, the requirements are Section 11.1 of the Zoning Ordinance. And paragraph 11.1.3 contains the procedures for the Conditional Use. A legal description had not been submitted prior to this evening. I believe one was submitted as part of the record this evening, but I have not had a chance to review it. You first must determine if a medical office is suitable for use on this property and the rest of my comments are basically about the site plan. I don't know whether you want to make your decision on that first, on the use before looking at the site plan, or how you wish to proceed.

Linda Rogers: I think the first thing the commission needs to do is whether or not they want to recommend...we are recommending this to the Town Council, correct?

Bob Kerr: Correct.

John Brady: Yes.

Linda Rogers: Okay, whether they want to recommend the conditional use before we actually get into the review of the site plan, but what I don't understand why we review the site plan in the event the Town Council should end up denying the request. I don't understand if you could clarify, why we're having a site plan review before they actually have the use of approval.

Bob Kerr: I did it basically because at the last conditional use you made a recommendation to Mayor and Council, they approved it, and somewhere in that approval there basically was no final site plan. If you remember, the dog treats business on Union Street, as far as I know they have not submitted a final site plan or any drawings of what they were going to do to that site, so trying to make sure if that was the way it was going to proceed, I wanted to redo the site plan also. That is why I asked if we stop at this point.

Linda Rogers: So do they need to go hand in hand with each other or is it like conditional use, yes or no, and then review the site plan?

Bob Kerr: Debbie is saying they are asking for both conditional use and a preliminary site plan as part of their application this evening.

Linda Rogers: Okay. So, our answer is we go ahead and review the site plan or we go ahead and say whether or not this commission feels that the site is appropriate for a doctor's office before we review the site plan?

Bob Kerr: I would think that, depending on your decision on your first, determines whether there's a need for the second and...

Linda Rogers: So, Mr. Brady, is that what we do?

Debbie Pfeil: I would like to say a comment for the record. Is the most of the time, and I am not speaking on behalf of Milton, but most of the time, people do do a site plan with a conditional use because it helps everybody understand the entire picture. If they didn't bring a site plan in, it would be hard to look at the landscaping and the parking and everything else. And the problem that I, when I met with the applicant and I met with Robin at the Town was letting this applicant continue forward in the site plan process final before you make a conditional use recommendation if that was the process because there's so much investment tied up in design, fire marshall, DelDot, all those reviews, and then it could just be yanked out from under them without getting a conditional use. So in discussing with the application and the process, when we discussed with the applicant, we recommended that they attach a site plan with this process, so basically I can see all the cards are laid out on the table and everybody can discuss the issues pertaining to the conditional use. You can see the whole picture.

John Brady: You are required, under the Code, to make a recommendation to Town Council to grant or deny the conditional use. As part of that, since Town Council has the final approval on a conditional use, subject to if you have said no, they would have to have a four-fist vote to override it. The site plan may be helpful to clarify if you make a recommendation concerns that you have that have come up and addressed to it.

Linda Rogers: Well first of all, I just think before we go into the details of the preliminary site plan, we need to know if you, as a commissioner, are willing to recommend it to Council with a recommendation of approval...

John Brady: And if I wasn't clear, you have to have a vote on the conditional use first. After you rule on the conditional use, then it becomes whether or not you go to the next part, which would be the preliminary site plan.

Linda Rogers: Okay. So what we're doing is, what's your opinion on allowing this building to be turned into a physician's office? What are your comments?

Ted Kanakos: About a year and a half ago, I was involved, I came before this commissioner before I was a member, and the issue was to grant a conditional use to something called Bark Avenue, which was a residence in the historic district, not in the Town Centre. It was the wisdom of this commission to let them do basically what they wanted and they still haven't come back with their site plan. At the time, I mentioned this was a slippery slope. There was a problem with traffic, a problem with this creeping down the street and becoming another miracle mile. Over a very brief period of time, next door there was a special use, and interior decorator, who I don't believe lives there or even meets the Code of this special use. Now we have another one a little further up. I am hard pressed to want to go forward on this and give the approval, but in good conscience, if you're going to let doggy treats on, you got to let a doctor on. This is a critical improvement, not on to the Town, but the Town needs this. I don't know how to say yes without furthering this president. Someone in Wagonman's West Shores could open up their living room and sell jewelry. Somebody in a new development can open up their garage and sell hardware. And you'd be hard pressed to say no. What's the difference? I mean, this is the conflict I have with spot zoning. The applicant is the most credible of all and yet it is spot zoning. So I, until we take the vote, that's how I feel. There's a conflict here.

Virginia Weeks: Madame Chair, may I speak? I will not be supporting the change. I will not be supporting a conditional use. The reasons being, for example, the Bark Avenue that you mentioned; that was a very difficult decision for me. But it was just 275 s.f.; it was one room in the house. The ordinance requires us to protect the best interest of the surrounding properties, the neighborhood and the Town as a whole. The public face that Milton puts out as seen in the recent newspaper and magazine articles about it, is one of down home, old houses, residents living in the area, and I don't want to do anything to disturb this. And a project of this size is an

anathema to what is perceived as what is Milton. I believe this is a slippery slope. The doctor's office on the other side of the church is for rent. There are properties in the Town Centre that are for sale. There are offices available at the Federal Street office building where Beebe has it's laboratories at the end of Federal Street, which is in the industrial/commercial area. I don't see if the doctor wants to locate in Milton, there are places that are already zoned for that that are available and I don't see a reason to change another residence into a business at this point. I'm concerned about the affects it will have on the two houses on either side. I truly believe they will lose value; that there will be a monetary loss to both of those properties to have a 19 car parking lot separating them and total pavement. I do not believe that a project of this size as a conditional use, which could not be returned to a residential area with a residential use. It's one thing if John Patacki and Milton's Salon undoes his salon, there's no permanent building, there's no damage done to the house or to the structure. It's easy to go back to a residential unit. In Bark Avenue, the same thing; it's easy for it to become, there was no structural change. This is an enormous change that condemns this property from ever truly being residential again without enormous costs to the person who would take it back, so I cannot support this. Thank you.

Linda Rogers: Would anyone else like to make a comment? If there are no other comments, would someone like to make a motion, either for or against the conditional use, and recommend it to Town Council?

Bill Brierly: I recommend that the commission deny this application for conditional use.

Linda Rogers: We have a motion on the floor to recommend this application for conditional use be denied. Is there a second?

Virginia Weeks: I second it.

Linda Rogers: We have a motion and a second, all in Favor? Roll call vote.

Ted Kanakos: And this is in favor of denial, Yes.

Bill Brierly: Yes, deny

Dean Sherman: No

Linda Rogers: No

Michael Filicko: I feel that a doctors office here in the Town of Milton would Enhance the value of those properties and again, this has nothing to do Because I do not have a personal relationship with Dr. Howard...I am No.

Louise Frey: Yes

Virginia Weeks: Yes

Linda Rogers: So we have 4 to recommend denial and 3 to not...4 in favor of the motion to forward this to Council with recommendation of denial and 3 against that motion. Motion Carried. So that means we don't review the site plan? Unless Council...

John Brady: Unless Mayor and Council by a four-fist vote return it for a granting of conditional use and I would recommend that you delay the site plan as the matter would be mute at this point.

Linda Rogers: Okay. The next item....

Debbie Pfeil: Wait. If I may interject, Robin, when are they going to be heard? Before the applicants leave? They are on the...they will be on the June 7th Town Council Meeting?

Robin Davis: Yes, if that is what you'd like.

John Brady: The 7th if you post it today.

Debbie Pfeil: The 7th...it's eligible for June 7th.

John Brady: The 4th is too quick. The 4th, the agenda has been posted already.

Debbie Pfeil: June 7th would be your meeting date.

John Brady: June 7th then.

Linda Rogers: Okay, the next item on our agenda is the application for annexation of a single lot. The applicants are Bernard C. and Doris O. White requesting the annexation of a 136' x 41' parcel of land located at 110 Ellendale Road further identified by Sussex County Tax Map and Parcel 2-35-14.15-66.00. Debbie, will this be handled like the other one?

Debbie Pfiel: Correct.

Linda Rogers: Okay.

Debbie Pfiel: I know Bob has a comment on this as well. The applicant has submitted annexation and we had the application and they did not have power of attorney. We have received that for the record, correct Robin?

Robin Davis: Yes.

Debbie Pfiel: And we are waiting on a survey to be completed and it will not be placed on the Town Council Agenda until the survey has been received. But it is a complete parcel at this time. We did do plan of services for Offices of State Planning. On May 7th we received a letter back from them stating "this letter is to confirm that we have received and accepted the plan of services for the above referenced annexation." I do want to read into record their further comment in their letter. "As you know there is a pending before the PSC, a case involving the Town of Milton and the provisional waste water service. We are unable to determine where the Commissions final decision in that case will affect the Town's authority to provide waste water service in the annexed area. Accordingly, we will approve the plan of services but this letter, in no way, be constructed as a proof for waste water service, but rather than the Town of Milton has followed the procedures established by the Offices of Management and Budget regarding the legal annexation." I do want to let you know that upon the research which you'll have in my review letter which is under tab 4. The above mentioned parcel is currently zoned AR (agricultural/residential) in the county. The States' strategies states it's an investment level 1 – it's the states intent to invest it's spending and management tools with the maintain in the (unintelligible – 9:45:48) character to promote well design and efficient new growth and facilitate redevelopment investment level 1. The Sussex County comprehensive plan depicts the location of this parcel within the Sussex County growth area; the Town of Milton developing area. In your comprehensive plan, the designated land use category to comprehensive plan is commercial business. This was a difficult one to find; we had to increase the map on the website to find out if it was residential or commercial. And the applicant said we would have the survey within 2 weeks. The annexation request is in compliance with the Town's current comprehensive land use plan regarding the future land use potential expansion area and identified future land use category. There currently is a structure on the property; it's a single family home. If the application is considered by the Town Council before the annexation process recommended, annexation agreement will be drafted as soon as possible. The one comment I have is if Bob Kerr wanted to speak on utilities at this time, then I will go back to your annexation committee report.

Bill Brierly: I have a question. When I look at some of the letter's here about the annexation petition, I see a property address of 110 Ellendale Road and when I look at a letter to the Office of State Planning by Robin Davis, I see the location noted as 100 Ellendale Road rather than 110, and I really think we are talking about 100, not 110 Ellendale Road.

Debbie Pfiel: We identified that as parcel information to the State Planning. We made sure the two addresses were (unintelligible), but the parcel numbers' how we record annexation growth area boundaries and that was the true number for parcel, but there is an error in the addressing.

Bill Brierly: So the correct address that we're talking about would be 100, I believe, Ellendale Road?

Debbie Pfiel: The applicant says 110. I'm not sure about 100; I think it was a typo and I think it is 110.

Linda Rogers: The district map and parcel is correct.

Debbie Pfiel: We are doing the annexation by map/parcel, so the address would be, it's the map and parcel, it's identifying mark for the county, and the state to let them know. Now I am going to turn it over to Bob and come back to your committee report.

Bob Kerr: As far as what water and sewer, it is available in the roadway; it is on the far side of the road. The property owner would be responsible for making the connection from their property to the existing town line. The lines have the capacity to supply the water and carry the waste away. There is the standard caveat that the Town has not determined at this point how they are using the remaining capacity at the waste water treatment plant.

Debbie Pfiel: I do want to let you know that we did discuss the reason for annexation as well with the applicant and I believe the applicant is here tonight and the lady that has the power of attorney, if there is any questions for them, but we discussed there's a failing septic system on the property, and therefore they have received some funding to be able to hook up to the Town's sewer system, if annexed into the city, so that is the infrastructure is really the reasoning. And they are aware that it's a full developer's expense. I went through that pretty fast because I know we have to some stuff, but the single lot annexation, I do want to let you know, with all the documentation you have in your packet, that it does meet your comprehensive land use plan.

Virginia Weeks: What zoning are we recommending or are they asking...what zoning are they requesting to come in as?

Bob Kerr: On these annexation petition, they only listed residential.

Debbie Pfiel: The Office of State Planning states C1, to be in, that was submitted to the state, to be in compliant with your comprehensive plan, as your land use is commercial business.

Virginia Weeks: So we're looking at making it commercial?

Debbie Pfiel: C1, correct.

Virginia Weeks: Bob, does this lot have the size required or would it be a non-conforming commercial lot? 41' seems awfully small.

Bob Kerr: It would be a non-conforming lot under C1. It does not meet the minimum lot area of 5000 s.f., but there is no minimum width or minimum depth, it's only a minimum of 5000 s.f.

Virginia Weeks: Are we allowed to annex in something in a non-conforming state?

Debbie Pfiel: 41' x 138' is the lot size.

Virginia Weeks: It says 136' x 41' here. I just want to make sure that...

Bob Kerr: I stand corrected. It's 5,576 s.f., that's why I should always use one of these.

Virginia Weeks: So it is or is not conforming?

Debbie Pfiel: It is conforming.

Bob Kerr: It does conform to the minimum lot area for a C1 zoning.

Virginia Weeks: I didn't want, later on, some commercial use coming in and it being a non-conforming lot. Thank you.

Debbie Pfiel: Is there any other questions from the commission for you planners, engineers or attorney?

Bill Brierly: So this is coming in as R1?

Debbie Pfiel: This is coming in as C1. That matches your comprehensive plan.

Linda Rogers: Does anyone else have any questions?

Debbie Pfiel: Did you want to go through the annexation committee report at this time? That was the document that we need to finish tonight. It's on Section 5. This is the draft that we used

for your last annexation for the 3-person committee. All I did was change some information in there but it would be up to you to determine your advantage or disadvantages, miscellaneous, and the commission has had over a week to review this with their packets.

Linda Rogers: Does anyone have any comments or questions in reference to this? You need to list the advantages and disadvantages of annexation and we do have to go with the comp plans that were done 5 years ago that says this is supposed to be C1.

Debbie Pfiel: Your future land use maps states "land use category is commercial/business". So you would have to have a commercial or business zoning or you would have to go through comprehensive plan change.

Linda Rogers: Which involves?

Debbie Pfiel: Public hearings, Office of State Planning; the same process you went through for the other one.

Ted Kanakos: We are saying they applied as an R1 but it has to come in as a C1.

Debbie Pfiel: They applied as an R1 and during the review time we've talked to them, and if it comes in as R1, it is inconsistent with your comprehensive plan.

Ted Kanakos: So, we have to make it C1?

Debbie Pfiel: To make it consistent with your comprehensive plan. C1, C2 or C3.

Ted Kanakos: And the residence can still be maintained on a commercial property?

John Brady: Yes.

Michael Filicko: So, could you please explain that Debbie? It's coming in at C1 but yet it's still going to be a residential home?

Debbie Pfiel: Correct. The use right now is a single family home. Your land use plan states you want it in as commercial/business in your land use category for future land use map. Therefore, for it to bring in, a single family is allowed in a C1 district. For it to come in, it would need to be compliant with the comp plan which would be C1. And that is in this document that I've prepared for you tonight, in detail, or a week ago I should say.

Virginia Weeks: So simply said, it's a conforming lot with a non-conforming use on it?

Debbie Pfiel: A single family home is not considered a non-conforming use on a commercial lot.

Linda Rogers: So we need to list our pros and cons of annexation.

Dean Sherman: We just need to like openly discuss the advantages and disadvantages of annexation?

Debbie Pfiel: If we want, I do have a correction on the property data section. You just want to go through this section? The property data section, it's going to be on tab 5 of your book, it says property data in the annexation committee report. The lot size is actually 41' x 136', it was a typo that I will correct there. Your schedule is stated in there based on the application of what has been submitted. State strategies, Comprehensive plan, Municipal comprehensive plan are wording right out of my letter for my review. So those would be the same exact things that we have in our review. Office of State Planning is documents of, once again, service letters, where we would need the input, and this would be from Mr. Kerr as well as the commission is. Committee finding advantages and disadvantages would be up to the commission. I gave you some examples of what was used in the past. Miscellaneous sewer and water I would ask for Mr. Kerr's comment, and the DelDot one, and then you would go through the committee conclusion. I know this is the first time for the commission as a whole, so I apologize how fast we're going, because the three members that went through the annexation committee have been through this and are familiar with that process. In the past, I don't know how you completed your committee reports, but it's a formal report that gets submitted to the commission, or the council, for consideration of annexation. So if we just talk about, if you want me to kind of run with it. If

we talk about advantages; one of the advantages in there is property taxes, that's kind of a standard. Another advantage might be local control by having municipal authority over the property municipal codes would control development. Another one is the municipal police, as far as who's in, who's out, on the Milton-Ellendale highway. And land use regulations; the governing body would be most impacted by the land use decisions would be the most decision. I didn't have any listed as disadvantages; it's going to be up to the commission. It's a single family lot. It would be up to you to determining any disadvantages. So if there is any input for advantages or disadvantages from the commission.

Virginia Weeks: Another advantage would be the rectification of the problems out there with the septic and so on; environmentally it would be a benefit.

Debbie Pfiel: So I would put environmental failing septic? As an advantage. It would correct the environmental failing septic.

John Brady: Mr. Brierly asked a question earlier about the address. Section 1, page 2, the affidavit indicates that the Dexter's live at 100 and the Parker's live at 112, so I think 110 is the correct number.

Mr. Brierly: Thank you very much.

Debbie Pfiel: Any other advantages or disadvantages from the commission?

Ted Kanakos: I have a question. This particular piece of property when it comes in as C1, is it the only commercial piece on that side, do you know? Is it the only one that has been, or will be, annexed in? There are others?

Debbie Pfiel: The map is the land use but I don't have the zoning map in here.

Ted Kanakos: And there's a big parcel behind it; a continuous parcel?

Debbie Pfiel: It's not in Town.

Ted Kanakos: Oh, it's not in Town. But that could be annexed through this piece of property?

Debbie Pfiel: It could be. It would be contiguous without this piece of property. It touches another piece of property.

Ted Kanakos: Thank you.

Bob Kerr: The adjoining properties that are within the Town, I guess the easy way to say it, everything on the North side of Route 16 that is within the Town is commercial, with the exception of the apartment complex which is at the other end.

Dean Sherman: It doesn't front 16.

Virginia Weeks: I see no disadvantages to this annexation.

Linda Rogers: No, I can't think of any either.

Virginia Weeks: Therefore, I would like to make a motion that we go ahead and approve this application for annexation.

Linda Rogers: Okay. We have a motion on the floor to recommend this application for approval for annexation, is there a second?

Debbie Pfiel: If I can interject, we're not there yet, if you don't mind.

Bob Kerr: We're not quite there.

Debbie Pfiel: We're not quite there; we have to go through the committee conclusion comments. Sorry.

Linda Rogers: Okay.

Debbie Pfiel: Okay, so no disadvantages. We will be changing under miscellaneous the word "developers" to "owners", under the bullets for sewer and water.

Bob Kerr: The third item, if it continues as a residential at this time, there won't be a need for an entrance permit.

Debbie Pfiel: It's utility.

Bob Kerr: I'm sorry, I was thinking entrance not utility.

Debbie Pfiel: Under the committee conclusion, you would make your motion based on the wording stated here, or if you wanted to pull some out. So, for example, if you wanted to say it's disadvantageous or advantageous, you would state if you want items 1, 2, 3, and 4 to be read as written. And those items are you are requesting the Council to hold a public hearing to fully explain what is being proposed to be annexed into the Town of Milton, you are requesting the County that it's recommending all adjoining property owners receive written notice of proposed annexation so that they may attend the city council public hearing or submit written comments to be included in the public hearing; you're also could request the public hearing be allowed the full reading of the annexation committee report and be reflected in the minutes of the public hearing as an exhibit; and you could also request the Town attorney research what parts of the roadway can be part of the annexation agreement to determine who would respond with the police. This is the language that was used on the last application. If you wanted to add or remove items, that's up to you. This would be your request; an option for the rest of council from you.

Linda Rogers: So we make a motion for this?

Debbie Pfiel: If you want to entertain a motion at your discretion, you would state if it's advantageous and the items you would like to be considered; 1, 2, 3, 4.

Linda Rogers: Ginny, you had a motion, do you?

Virginia Weeks: I amend my motion to reflect what the Town planner has stated.

Linda Rogers: So you have to read this out, is that what we have to do.

Virginia Weeks: Except for...do we really need to read this out?

Debbie Pfiel: You can accept the report as written?

John Brady: Your motion is that the annexation committee's conclusion in the annexation application as advantageous to both the Town and the territory to be annexed and the recommendations considered by Council are as follows, 1, 2, 3, 4 as typed. Is that the nature of your motion?

Linda Rogers: That's good.

Virginia Weeks: Number 3 is the public hearing will allow the full reading of the annexation?

Debbie Pfiel: Yep.

John Brady: Yes.

Virginia Weeks: I would like to delete that.

Debbie Pfiel: You do not want the annexation committee report read to the Council at the public hearing?

Virginia Weeks: You want the whole report read? Is it advantageous to do that?

Debbie Pfiel: You are required by the charter to do a report to the Council. They can request to not have it fully read.

John Brady: They can suspend the reading of it.

Virginia Weeks: Okay, then leave it as is.

Linda Rogers: So we have a motion, is there a second?

Dean Sherman: Second.

Linda Rogers: We have a motion and a second. All in Favor, roll call vote:

Ted Kanakos: Yes

Bill Brierly: Yes

Dean Sherman: Yes

Linda Rogers: Yes

Michael Filicko: Yes

Louise Frey: Yes

Virginia Weeks: Yes

Linda Rogers: So this will be forwarded to the Town Council.

John Brady: The 7th Robin?

Robin Davis: No, we still have to wait on the survey.

Debbie Pfiel: Yes, we're not placed until we get a survey.

John Brady: Until we have a survey, you can't be scheduled for a Town meeting.

Debbie Pfiel: Are you ready for my item? It will be quick. I'm sorry, did you want to go to the next item, chairperson, I'll make it quick.

Linda Rogers: Yes. The next item on our agenda is the discussion on zoning ordinance 6.1.4.

Debbie Pfiel: The first thing I have some housekeeping things. We will need you to leave your annexation books. Every time you have them at the counter you can take out and remove whatever applications you want, whatever information you want out of there, but we would need the tabs in the book so we can properly get that to you for the next application. And the second one is we would need you to leave your conditional use plans for the medical office if you haven't written on them or done anything with them. The ones that are left over we need to use for the council packets. We do not have enough applications.

Dean Sherman: Excuse me, you want us to clean out the specific...

Debbie Pfiel: No, if you don't want anything in there, we will clean it out for you. Just give us the book. You can keep your own records if you choose to, but remember the true records for the Town are up at Town Hall and are available under the FOIA and archive system.

Dean Sherman: You want the drawing stack only?

Louise Frey: I have a question.

Debbie Pfiel: Anything you don't want, just leave on the table.

Louise Frey: Debbie, may I ask a question please? The reasons that I reiterated for not being able to vote for the conditional use, will those be forwarded in writing to the Town Council?

Debbie Pfiel: The reasons why you denied?

Virginia Weeks: Yes.

Debbie Pfiel: They would get a copy of the report from the chairperson, Mrs. Rogers.

Virginia Weeks: Because I won't be here June 1st and I'd like to make sure they know the reasoning behind me.

Debbie Pfiel: And the commission doesn't need to represent as a whole. You have a chairperson. Their role is to represent the planning commission at the Council meeting. If they're not present, then the role would be the minutes would need to be forwarded. Ideally we like to go back to the minute's system, where the minutes would go.

Linda Rogers: What is it you want?

Virginia Weeks: When I explained why I would not be able to vote for this, I believe that...

Linda Rogers: It's not actually a part of the report that I give them because all I give them is the report of what we heard and what action we took...

Virginia Weeks: But I remember they come...

Linda Rogers: But they are in a part of the minutes when the minutes are given to them to read.

Virginia Weeks: But I remember C. Harris asking that before things are given to them, he wanted either the minutes or the reason for the votings.

Debbie Pfiel: And we are working on the minutes but if the turnover is that tight, we won't have them done. Okay. I have a couple recommendations after observing a couple of your meetings, and it sounds to me like the planning commission as a whole wants to make some changes in a positive direction - shorter meetings; more organized; stick to the parameters within your jurisdiction. This is not a political board, this is a land use planning board and it's a recommending board, so based on that, the Town has hired URS and I have had some conversations with the attorney today on process and with Robin, the project coordinator. You

make all might have to shift chairs a little bit if you want to see this map. I am going to go over it briefly to let you know what your current process is. We did have a planning session where several people attended and said you want your information ahead of time and you want it in packets to be able to review. If we give that information to you, all the commissioners do understand your role is to do homework. Your role is to look at the site plan, to observe the property, so that time cuts out of unneeded questions during a planning commission meeting. Where is the property located, I never went there? Those kinds of questions, it is your role as the planning commissioner to get out there and do your due diligence. If that's something you don't want to do, let us know and we will not put the hours in to get the packets out. It's a lot of hard work to get those packets out. We have to do it twice – the planning commission and Council. So, you have to do your homework and I think I am just preaching to the choir, you guys know that but we have to make sure that everybody does homework prior to the commission meetings to cut down on some of the time. I observed a lot tonight on a lot of things that were brought up that are outside the parameters of the commission and a lot of the public that we could speed things up and I am going to give some recommendations and then we would like a vote tonight on how you want to proceed. I'm first going to start with your meeting format; that's probably the easiest one. We're proposing a meeting format to you to go back to an organized system. Nine members is the highest planning commission board I've seen in a long time. They're down to 5 & 7 meetings. That's nine different opinions, nine different personalities; that's a high number for your consultants and your council to try to get to please everybody or make everybody happy with the votes. What we're trying to do with this new meeting format, and we've talked to your chairperson, is the applicant would come and present their application first on anything – rezones, conditional use, everything – they present. We are going to try and keep those to a 10 minute presentation and 10 minutes is a pretty good time, but that is also, unless otherwise determined by the chairperson. So we are going to try to 10 minutes. Tonight you heard a conditional use that went on for a very, very, very long time and a lot of that time could be cut out if we say, if Robin and I meet with them upfront, to say we are anticipating a 10 minute presentation time so say what you need to say quick, fast and easy.

Dean Sherman: People are lazy. We sit through hours of boring stuff about stuff that doesn't apply to land use.

Debbie Pfiel: Personal stuff, stories about other states, stories about other towns, stories about other developments...so what we are trying to say is quick, to the point, give us the facts. We're here for facts of land use. So we are recommending 10 minutes. Now what will happen is we're now having pre-development meetings with all your applications where we sit down, we meet with them. You had an application tonight that had a storm drain pond right in the front yard. We recommended they don't even put it there, so we tweaked it before you even got it. We're trying to make things better for you. So the application would present. Then we have discussion topics for review. Each topic will be discussed in the order stated below starting with consultants' comments followed by the commissioners. We would start with the first conversation being the comprehensive plan. We would discuss the comprehensive plan, all the commissioners would address it, the consultants would address it, the commissioners would address any kinds of questions, then we would be done with that topic. It wouldn't be up for later discussion. We'd be able to do a topic at a time and stay on topic. The one thing that I observed about the meeting format is staying on track, staying on focus. It's very difficult when you have 9 people; very difficult, because somebody could be just kind of hanging out and then come back to the same exact topic. What this does, we'll now, Bob Kerr and I, can look at our evaluations and our letters and we could look at doing our letter formats within these topics, so when you get to the topic of comprehensive plan, we'd be able to speak on that and you would

be able to have any questions. If there's no questions we go onto the next item, because some of these items are going to take some discussion – parking, signage, some of the things you care about more so than others. What we're also going to do, we're proposing is putting a worksheet in your packet with every application with these topics, so you do your homework and you write your comments down on that worksheet. So you come prepared for the meeting rather than maybe off the cuff or in your head; something could have happened to you that day where you can't even think about what you have to do at the planning commission meeting. But if you take the application and you write your notes, we'll give you a worksheet, you write your notes of your concerns, your issues you want to address, and there bullet comments, there not a long drawn statements concerning storm water management, concern with setback, concern with parking lot, you would be bring that, and you'd be equipped for the meeting just like your consultants are. And I can probably predict your meeting time will be cut down immensely. And I can tell you who's going to welcome this more than you is your applicants, because an applicant that comes in front of you gets hit a million directions a million different times by 9 people. So your applicant will be prepared in their presentation if they come in here very smart, they'll have their presentation in the first 10 minutes and just go over the issues pretty much what Bob and I have. So they should cut some of that out in their first 10 minutes. Then our recommendation is public comment. Here's my recommendation on public comment. You can limit it to two minutes per speaker unless otherwise determined. When people know they have 2 minutes, they get right to the point. They don't stand up here and tell stories, they don't go on a (unintelligible), they don't give too much detail, but if you know you can say you've got 2, go ahead and do your public comment, it's quick, it's direct, it's to the point. Several municipalities are doing this at the Council level and planning commission. So if we can try to get on that piece if somebody goes over, I'm not going to have an alarm clock or a sticker, but there can also be the look, because we want the meeting to keep continue to flow.

Bill Brierly: Along with the public comment, would you allow some back and forth Q & A with that? So it could extend beyond 2 minutes with Q & A with that person.

Debbie Pfiel: Correct. But the official statement they want to come in, give us what you have to say in 2 minutes because you look at the time tonight and it's 10:15, and you look at some of the applications, I don't think some things were said within an hour of reasoning; not necessarily on the commissions part. But everybody shakes their head and you look at me and then Mr. Kerr and Mr. Brady and I are thinking how rude do we be? How rude are we tonight or how much do we reel it back in? I would also give a recommendation in that like the Q & A. Your third, oh that's supposed to be number 5. Number 5 is entertain a motion. There's four options you usually have – approve as presented; approve with conditions as stated in motion, which by the way if you are doing your motion with conditions it's phenomenal, because Robin, Bob and I get to comment back, we can just go right to your motion and make sure they're on before they submit again, we need to go back to your minutes as a check list. You can also table stating the reasons and you can deny stating the reasons, but you definitely want to, like I said the commission would get a roll call, you're really good at stating your reasons why. You want to stay on track with your reasons why. Once again, let's not draw it out, let's get it quick – bullets and statements, and done. If you want to stay here all night that's fine, but you have three consultants that the Town is paying for too. I'm sure you all have a life outside of here. I'm sure you would like dinner at a decent hour, so it's your call if you want to follow this. What we would happen at the pre-development is we would give this to the applicant. When they come to the meeting they'd be prepared. We would keep the poster at the meeting, so people would know. In your packets you'd have the worksheets to follow. I do think, if you adopt this process, this is an administrative process; this does not have to be done by ordinance, if you do

this as an administrative process give it a chance. I do think this would streamline a lot of the difficulty you are having, but what you want to say for the record would be heard, thought through and really researched before you say it. Any questions on this or any concerns, comments, you like it, you don't like it?

Virginia Weeks: I'm happy to see this but I'm also happy to see that we'll be, that public comment will be for every issue that comes before us, not just those that require a public hearing.

Debbie Pfiel: Right. Now I do have, I do want to say again on the public comment; we have discussed taking the public hearing process out of the planning commissions' hands. I think that we need to see how the planning commission with the new process and new schedule and determine if you want to do that, because a lot of the things that come out at public hearings are irrelevant to planning commission. Financial consideration, financial gain, annexation agreements, that has nothing to do with the planning commission. And we'll definitely, between Mr. Brady, Mr. Kerr and ourselves, to be able to say that's not in your scope, as a protection for you, because people want to come up and say they are complaining about parking while they are standing at public comment. There's nothing you could really do on the planning commission about that. There's a system in place that they can go ahead and do things for. So, I think that the public hearing is an, with this process, Linda can be a little more strict with the people on the public comment to say, what is your comment about this application? Not five years down the road, or ten years down the road, or something that happened at band camp. I think you can keep it more restrictive. We can give it a try and see but we're determining the different processes of the public hearings, but at least you'd have an option for public comment on that's important to you. But we also want it know that this is a land use board; this is a comprehensive land board; this is a site plan board; this isn't a board that goes for opposition because of public viewpoint. You want to consider the recommendations and hopefully the developer will do them or consider them or add them to the scope of their project; that's a good neighbor deal. But I think, like I said, it needs to be cut and short, and I don't to, at this time, even recommend taking the public comment period away from the planning commission, because I think that the precedence that's been set with you in the past, so I think that needs to continue right now. Is there any questions on this? If you have any further questions, we'd like to institute this at your next meeting. We already have your applications; they were due today and we have another whopper meeting coming up, so if there's no other questions I'd entertain a motion, or Linda would entertain a motion I guess, to adopt your meeting format, because this wouldn't be an ordinance, this is an administrative change, how you run your meetings. We can test it out for a couple months or however you want to do it.

Linda Rogers: Well, what's the opinion of the rest of the members?

Virginia Weeks: I think we should certainly test it out.

Ted Kanakos: Yeah, I think we should.

Virginia Weeks: Linda, one thing I would like to consider though is, I'm not real, I would like to see, I don't like having the planning & zoning two nights in a row. You go home exhausted one night and...it's too quick.

Debbie Pfiel: But, I mean, as far as this process, I don't think you'll have two meetings if you run your meetings properly.

Virginia Weeks: Well you just said another whopper and I'm going...

Debbie Pfiel: But I don't...here's the thing. With your meetings being ran the way they are, you can have two applications and be here all night. You had two last night and were here a long time. So if you ran your meetings in a professional style and the applicants are aware of them, your engineer and planner are doing their letters that way, you've done your homework based on your worksheet, you should be very smooth and given the recommendation, I would definitely...

Since this isn't a political board it's a planning commission, I would definitely share, I wouldn't do any more, any personal stories from the committee members or commission members, and I would try to make bullet statements as much as possible. I wouldn't drag out to make the audience happy of what you're saying. You're not a politician. I would definitely say what your concern is, get your questions, get your answers, and have the applicant respond. Like I said, it's land use, it's site plan, it's cut and dry. As far as the politically correct version, or how you want to say things, or how long you want to say things, you can cut that out. You can control your own meeting by that. It's a strong recommendation; that my recommendation would be as we may not have to go to two meetings. We had to go to two meetings because the meeting dates were changed. And we are going to be talking about that process in a minute. It opened up a new process for it to be (unintelligible). Bob and John, did you guys have any comments before I get into this process or they entertain a motion? Am I pretty close to what we were thinking about?

Bob Kerr: This is the first time I've heard at all was just as Debbie made the presentation. I guess my concern is it's your, at least for the foreseeable future, you're going to have a public hearing where everybody gets to give their public hearing and then they get to turn around and make another presentation and then there's public comment after you've gone through the discussion. Are we going to end up with another discussion after the public comment. Most of the other jurisdictions, I do more work at the county level. There's a presentation made in a public hearing. The public comments. There is never any back and forth between the applicant and the rest of the public unless the commission chooses which they very rarely do. And then, typically they don't even get around to the business meeting until the next meeting. They'll have a public hearing one week and their meetings run so late that they have the business meeting the next time at which there is no public participation or particularly applicant participation.

Debbie Pfiel: I think you bring up a good point. The problem we have is in their code, which I haven't seen in a long time, is preliminary site plans require a public hearing. Every preliminary site plan. So, if we run the public hearing portion of it then you wouldn't have public comment at the end, on this modification. If you have a public hearing as an option, the presentation would be the public hearing, you would open the public comment up again unless they needed, because we would have those items addressed. Kind of like what you run in the county. I mean, I agree with you. Does that make sense? You wouldn't have two public comment periods. I wouldn't recommend that. So, if you have to have a public hearing process, then you would have the public comment at that time, which is item number 1, after the presentation, not before.

Bob Kerr: I just see the potential that after the public comment, as your item number 3, items that were brought up by the public may require going back through many of the items under 2. Virginia Weeks: Maybe we should move public comment to two.

Debbie Pfiel: If we're doing application presentations that require a public hearing, this part right here is going to be the public hearing and presentation, section 1, you wouldn't have a section 4.

Bob Kerr: But if you're just doing that...if you're just taking those 4 steps that you show, no public hearing, but just those 4 steps, essentially the commission has gone through their review and discussion as item number 2, you have then opened it to public comment, then you make end up going through another review because of something brought up by the public comment.

Debbie Pfiel: So do you want public comment on each topic?

Bob Kerr: No, I would rather say that the same way it's done now, public hearing, you get the public hearing and the public comment out of the way, and then if for any reason it doesn't get acted on further that evening, under this way, you'd end up having to re-advertise and open the public hearing up again if you didn't finish it that night.

Debbie Pfiel: We don't want to go multiple meetings.

Bob Kerr: No. But there may be times, unless you are going to just....

Debbie Pfiel: Like public opposition I'm sure, and research.

Bob Kerr: Or if there's any need to not finish it that not, that for whatever reason it gets tabled, this requires basically keeping the public record open and allowing people to come back and basically start the process all over.

Virginia Weeks: On a topic where there is no public hearing, whatever, would there be public comment?

Debbie Pfiel: I believe in the past you've accepted public comment on all applications. Am I correct in saying that? Read in your minutes.

Virginia Weeks: Pretty much.

Linda Rogers: Well, most everything we have has because we have preliminary site plans. We don't allow time.

Debbie Pfiel: Robin is saying yes.

Linda Rogers: Yes what?

Debbie Pfiel: Yes you've allowed comments on all applications, according to the minutes that we read.

Virginia Weeks: I would prefer to see the public comment come before...I would like to see the applicants proof, when there's no public hearing. The applicants presentation, then the public comment, and then our discussion, because...

Debbie Pfiel: What's your feeling, Bob, as far as public comment on a non-public hearing item?

Bob Kerr: I'm trying to think of one that doesn't require a public hearing.

Linda Rogers: Yeah, that's my point. Do we have anything that's not?

Debbie Pfiel: Subdivision. Your concept. How about ...

Bob Kerr: We don't have concept plans...

Virginia Weeks: Conceptual plans don't require....

Bob Kerr: Well I guess...

Debbie Pfiel: Subdivision.

Bob Kerr: If it is something that doesn't require a public hearing, it's only at the discretion of the commission. This is trying to more formalize it that on nights there isn't a need for it you could still have 15 people who want to tell you they like it or dislike it.

Debbie Pfiel: But, I guess what I'm asking you and the clients that you serve and I know the clients that I serve, the planning commission do not allow public comment on non-public hearing items at a planning commission level. They let them at Council level but not at planning commission level. In the applicants or clients you serve, does the planning commission accept comments on non-public hearing items?

Bob Kerr: No, but Milton has always had more public participation. Most of them, in order to shorten their meetings someone only gets to speak one time. You've seen many times, even both Sussex and Kent County and New Castle County you speak once, and that includes the applicant. Once you sit down, you don't get to get up again.

Debbie Pfiel: And John and Mike, correct in saying that if we had a public comment period at planning commission level and a public comment period at Town Council level, it could be one or the other, or you would recommend both? I know the minutes are being forwarded, I guess that may be a loaded question I gave you.

Linda Rogers: If I can ask a question. What do we have on our agenda that normally we don't have at the public hearing? I mean, yes, we have site plans, but the preliminary has to public.

Bob Kerr: The concept.

Linda Rogers: The concept plan which we've only done a couple of times.

John Brady: Discussion of proposed ordinances. You don't usually allow public comments when you decide to do that in discussion of procedures. So there's in the past there's not been public comment on the presentation you would have tonight and proposed zoning ordinances because they go to another committee after you review it. You usually...

Debbie Pfiel: They would go to Council for public hearing.

John Brady: Right. The Council holds the public hearing.

Debbie Pfiel: Okay. So ordinances or proposed regulation changes would not be public, until you go to Council level.

John Brady: In the past, under the code, you would not have to have it as a public comment. However, in the past, you've allowed people to comment on this level.

Linda Rogers: That's because I thought we were supposed to have a public hearing.

Debbie Pfiel: For your ordinances though, it goes to Town Council for consideration, your recommending body for public hearing. But for all your other, like I'm thinking of what's not going to be public. I can make an easy change to this just to put public comment after number 1, which would be part of your public hearing process, correct?

1 and 2 would either be your public hearing process. Because what application do we have that is not a public hearing this week?

Virginia Weeks: The conceptual plan is the only thing I can think of that would come in.

Debbie Pfiel: But you don't require conceptual plan, you prefer site plan.

Virginia Weeks: We usually have conceptual plans don't we?

Debbie Pfiel: A conceptual plan is not required for a site plan. All of these tonight were preliminary.

John Brady: If you have a conceptual plan in the past, you've taken public comment because they've talked about the comment. Generally speaking, the only other time it comes back up is if you have a public hearing, and you vote to defer the matter to the next date unless you reopen the record, all you'd do would be discuss at that point. You wouldn't have public comment because your public record would have already been heard and closed. So what we saw when the question came up on additional public comment in Shipbuilders, and I told you that night, that the record had been closed, and the only way to have additional public comment was to make a motion to have another public hearing and reopen the record and that would give the public notice that the record was reopened. And matters the second, the additional matter would be matters that have had a public hearing and had been deferred by planning and zoning to a future meeting for consideration would not have new additional public comment at that future meeting.

Debbie Pfiel: So would I be comfortable, Bob and John, I'm going to look at you two, in putting 1 and 2 as part of the public hearing process, applicant presentation and then public comment, and then following the process?

Bob Kerr: My choice would be that one includes the presentation and public comment.

Debbie Pfiel: Okay, alright.

Bob Kerr: And that the record close, and then whenever the business meeting is held, it can be held. It doesn't have to be concurrent. You get through that, again oftentimes, if you can move the public hearing along, you could have many large groups of people who want to say something and you're 4th on the agenda, they have to sit here for a long time. If you get the public hearing and public participation completed, many of those people will not stay around to hear the business decision. They'll hear about it the next day or whenever it occurs.

Debbie Pfiel: But what we could do is say, take the public hearing comments into consideration during items 2a-m, during those discussions.

Bob Kerr: That would be the other advantage that you have all the public comments. You haven't...

Debbie Pfiel: Before we discuss it. Does the commission or did we totally lose you on track with our... One, item number one would include application presentation. After the application presentation, we would go to public comment at that time. So I'd redo this to do 1, 2, 3 and then 4.

Virginia Weeks: Exactly.

Michael Filicko: Debbie, 10 minutes. If there is, as you said, a whopper coming before us, how is 10 minutes going to be long enough for them to make their presentation. Because all the information they are going to present, you've got in your packet a week and 2 days in advance. So you have everything they have given to us, and we're not having them bring new stuff the night of the meeting. Because when you have a preliminary site plan, you have 15 days, the public can come in to view that. They can't bring anything new to you the night of the meeting. So you have your packet ahead of time, they know you have all your information, they have the letter from Bob and I before the meeting, so they can get their presentation focused around the items to be discussed. There, I can think, even in LPD, they can come in and do, and I hate to a dog and pony show, or the tap dance, but it can be within 10 minutes. It can be here's what we're going to do, you have the information in front of you, you've had a chance to review it, you've had a chance to research it.

Virginia Weeks: We won't be listening to family histories any more.

Debbie Pfiel: Exactly. What it does is it cuts to business. I hate to be

John Brady: What Debbie is proposing is rigid flexibility. We have a hot topic issue where you have to give more time it would be in the discretion of the chair to do allocate that resource. But what you've asked previously and what you asked me when I came on board, was how to streamline the process, to be more efficient, and that is what Debbie has tried to work on with this process. With regard to the reason of the two meetings this month and the change from your normal meeting date, that's my fault. I'm the first one to admit when my schedule, when the Town Council interviewed me, I told them, middle of May, middle of July, I'm on the road teaching. And now I'm being told tough, that I have to have my butt back here but then in the past, when I was out of Town, you didn't like that so we're going to...we'll figure that out. You also didn't like who I sent to substitute for once, so I'm dealing with that issue, too.

Debbie Pfiel: We requested John attend your planning and zoning meetings. There are several things, and I have to keep calling Bob and John to get interpretations of your code because there are couple issues, nothing major, but. Okay, if I could, if you want to take action on changing this where item 1 is the application presentation, 2 is public comment, 3 is the discussion for review, and 4 would be the reason, or your motion to vote. I will redo that board and we will work on your worksheets and we'll start letting developers know the June meeting this format will be forwarded.

Virginia Weeks: And that will be for everything that comes before us even if it doesn't require a public hearing.

Debbie Pfiel: There's only a couple of things, like they said like the ordinances or the discussion like this that doesn't require and ordinance review. But we couldn't think of another item that did not have a public hearing was our, at this time.

Bob Kerr: When the zoning ordinance was originally adopted, there were several public hearings by planning and zoning.

Debbie Pfiel: So it sounds like we are keeping that in. It's all over you code, I should say that I was surprised, but it's all over your code to have public hearings so we are keeping that process in. We're not proposing an ordinance change. We're going to stay in compliant with your ordinances right now.

Linda Rogers: So we need a motion to do this?

Debbie Pfiel: Yes for administrative procedure for Robin can go ahead and work on this and I can.

Linda Rogers: Shall we entertain a motion for the meeting format?

Virginia Weeks: I make a motion we accept for the next 5 months this try-out of this, of the proposed administrative....

Linda Rogers: We have a motion, is there a second?

Dean Sherman: I'll second it.

Linda Rogers: We have a motion and a second to try this meeting format for at least the next 5 months, all in Favor say "Aye". Opposed – None. Carried. We'll try it but you may have to help us a little bit.

Debbie Pfiel: I want to let you know that this will be referred to Council at the June 7th meeting to be presented to then on June 7th, because we are recommending body, but we'll be on the agenda for June 7th. The last thing I have to do is I need to show you so you really understand your current process in your proposal and I did a sketch here. Your meeting, your code says "all your preliminary site plans are due within 21 days". It doesn't say working days it says just 21 days. So I am going to tell you that in order for us to get your work ahead of time to you what's involved. There is a lot involved. The first thing is, let's just take May for example. Your current condition, the due date was yesterday, we got all our plans, today, we got our plans in today, we had to hand deliver those to Bob Kerr and myself, we have only 7 days to do all the reviews, whether that's 20 applications or 2. We only have 7 days to get those back to you. And sometimes it is within the hour or the hour after or the day after. Once we get done with that review, right here, we have to have our comments to Robin. Robin has to get the packets out within 2 days, which means he can't be sick, he can't have anything else going on, no code enforcement. Bob can't take a vacation; Debbie can't take a day off. It's that tight of a schedule. We can't serve you as well as we'd like to with a product that you want as you want it in advance under the current system. That means your packets would be delivered one week before the planning commission meeting; you would have 3, 4, 5, 6, 7 days to review your packet, then we have to turn around and do minutes and a follow-up. That's your current system right now. I just wanted to let you know how tight that is. See you just started getting packets in advance; you just started getting packets with comments before you being heard. We had that meeting, you said you wanted packets in advance and you want all the information in there and you want all your consultants letters in there. I think you were pretty firm in wanting those three things so you could be prepared for your meeting. But in order for us to get you prepared for your meeting, we're proposing a change to that process. Right now, Robin is having to just put everybody on the agenda right away. He's having to take these guys and putting them on an agenda right away because of legal notice. The next day. Bob and I haven't even had a chance to talk to John Brady or Robin to see if something should even go on the agenda. In the past, all the applications' have been put on the agenda and you've heard them. We're trying to tweak and make everything right before it even gets to you. The theatre, this is our second submittal technically to the Town, you saw the second version, you didn't see the first version. The medical building, you didn't see the first submittal, you saw the second one. So we're trying to tweak as much as we can as we go along to get you a better product. Talk then into a couple of things to save you some time – landscaping, lighting, etc. We're proposing that the new due dates would be the first business day of every month. The change would be the project coordinator, meaning the Town staff, would have approximately within 7 working days before they would have to state that whether the requirements have been met or not. Robins only rule in that is to say you met the checklist, you have everything on your plan. He would then, on that 7th day, he would have to, this is just a tentative time frame, that 7th day, he would have to fax back

the applicant to say you have met the requirements, you're eligible to move forward, and your document will be forwarded to the consultants. Or you have not met it, you are not eligible for this agenda, here's what you're missing. So you are not going to see any more incomplete applications, and this is pretty much getting to be a standard in the planning industry and engineering as well. We're going to provide them with a checklist ahead of time to help them out. And the code. If they need it, it's called pre-qualification, if they need it, it will then be forwarded to your consultants. Your consultants would have in this, I did it by the month, 13.5 days, we'd have approximately 3 weeks to do research on your comp plan and maybe even get out to the site. I mean Bob, I don't have time in my review to go out to the site, not with a 7 day turnaround. I am just trying to get the letter done, let alone the review. So this is going to give us ample time to come out to the site. To come out to see what we have going on; to look at other things; to be able to have our documents well prepared for you. That would be, right now this process is 13.5 days. At this point, we would have to have our comments back to Robin. He would then have to post the agenda. They are not eligible for the agenda until we give him the proper paper. We are pre-qualifying them now for the agenda. He would then do the legal notices and the planning and zoning agenda. He would have 3 business days to do that. He has to look up all the properties within 200 feet and prepare a list of who owns those. He has to prepare a letter, the legal notices. We have to get that to the paper. There's a lot of costly, time-consuming process when you do public hearings. So he would have the three-day meeting. Then we go to, right back up here we're going to go into the process. Three-day meeting packet prep, we're proposing your meeting packets get out the Friday before, so you would have a total of 12 days to review your packet, so that's going to give you plenty of time to be able to get out to the site. They are going to be more detailed packets, probably more information in there because Bob and I will have a chance to do our jobs the way that we want to do it. So you probably have more detail, but you'll have 12 days before your meeting time. Then we'll have the meeting, then we have the meeting minutes, and the clean-up afterwards. I did this for 3 months because Robin and I wanted to see how upset the development community may be for extending the due date, because it was 21 days, now we're looking at here's your due date for the June meeting. Your due date for the June meeting would be May 1st, for the June 19th meeting. So that's quite a long time, because that's 31 and 19, that's quite a long time for an applicant, but that's what it's going to take to be able to get you the product that you want. And the one thing developers care about the most is when is my due date and when am I on the meeting; those are the two questions they're going to have. If we let them know we are trying to streamline the process in here, get their documents right, get their reviews done, get the correspondence back, that's the part we're missing, it will be open reception for your applicants because we can almost assure them a smoother process during your meeting, based on your new format as well. So what we're proposing to Council is an ordinance change. An ordinance change to remove the 21 days. This is preliminary site plan and John and I were talking about the synopsis today but we would remove the 21 days and say all applications submitted to planning and zoning will be due the first, some kind of wording like this, but will be due the first business day of the month for the next months meeting. Some days there's 33 days some days there's 35 and some days there were 32; we were just going through a couple months to figure it out. We'll take the slack on the ones that are less. I know this is just kind of going through and it's to visually to go through with you but I wanted to show you how if you want us to do a better job for you, and Robin, to get the minutes done. Before the next meeting, because right now, what we want to do is we want to get you the minutes from tonight on your next meeting and I can't see that happening because right now we are working on next months, starting Friday. So we don't have that time at all to be able to do the correspondence we need to do to protect you. Is there any kind of questions on this?

John Brady: Shipbuilders is one of the issues that brought some of these issues to forefront. The comments I received in December after the proposed findings were received by you at 4:00 for a 7:00 meeting the same day, you asked for more time to review documents; more time to see things. The second thing is, some of the questions each of you have brought up, where you talk about in the preliminary site plan, the following things were missing. This would be cured so you would not be spending a lot of the time going through that saying what about this, what about that, trying to make it more efficient and the more judicial use of your time when you come to your meeting that you have a full application in front of you so you can focus on it and trying to, the comments you brought, just trying to streamline the process and make it more efficient.

Debbie Pfeil: What we want to do is be, give you better customer service from your consultants and Robin, but the give the applicants better customer service instead of just saying I don't know what they are going to do, go to the meeting. We want to be able to guide them; tell them how we do things; welcome them to Milton, but here's our schedule, instead of you maybe having to feel you are working around a developers' schedule. You won't feel as rushed because you'll have the documentation and I think I heard several times from the planning commissioner, after you get done making a motion, you kind of walk out of the room going I don't know, you go home sleeping at night and you're like I should have asked about that, everybody does that, I don't know if I should have voted that way, but I went with my gut. Your worksheets will help you live at peace with yourself, I hate to say it that way, but your worksheets will help you clear your mind at a certain mind and you could be able to run the meeting based on your worksheets. Those are the two assets I've used in 3 other towns and the planning commissioners love them, because then you can stay focused and you truly have your concerns down there. Something new comes up and somebody's already hit it, you cross it off your list. Somebody else already brought it up. What we did is up to you, but we just went down the row all the same time; always starting with the one person, it always went down in a row. It was nice and easy instead of anybody, you just always said commissioner do you have any questions on landscaping, you just keep going, same format. Then we can start getting your flavor a little bit. It's hard for your planner to know what your flavor is. You go to planning commission like this is the person that loves trees; this is the person that wants bricks; this is the person, you know, wants historic look; you kind of start getting your characters. Once we start to know those, we can massage your applicants to get them better prepared for your meeting. Say I can tell you this, they are probably going to say this, so why don't you just put it on if you agree to it. We might have had your thing off your list already.

Virginia Weeks: Debbie, you're still only giving Robin 30 days to deem that application complete, and that's with his review of it and your review and Bob's review, is that correct? It doesn't seem like a lot of time.

Debbie Pfeil: No, we're given, the only thing Robin is doing is saying he'll have a matrix that says you met the code for preliminary or you didn't. He's just going to be checking in pen, nothing typed, maybe faxing that to the applicant. That's his job. Your consultants, Bob, I'd probably be comfortable in saying we're very happy with 15 days vs. 7 days. 15 workings day we can probably work within.

Bob Kerr: As an example, the Milton Theatre I received on Monday, Robin wanted comments on Tuesday, I was out of the office on Monday, it made it very difficult.

Virginia Weeks: It doesn't seem like a lot of time for the consultants or Robin. I think there should be a time frame that there be 60 days behind. Is there a state statute that says you have to get something back to the applicant before a certain time?

John Brady: We had an issue come up statutorily with the Board of Adjustments where they had a certain time period under state law to respond. For predictability in the business community, 60 to 90 days may be too much. 21 days seems to be too short here, and that's why 33 – 38 days seems to be the happy medium to see if it works, but it will give approximately 10 – 14 more days from the front end. And hopefully it will be an efficient process and if it doesn't then in 6 months we can go back and look at something different. Part of the concerns that were raised that came in front of the commission 2 months ago was that some people thought it was not less than a business-friendly environment in some of the different boards and commissions, and I think it shows they understand that we're trying to work with the people who are applying and if you have everything right, you go right through. It's still less than some of the surrounding time periods for action as unfortunately because of the workloads in other counties and other towns. So it's still going fairly quickly.

Debbie Pfeil: And I do want to let you know that the only thing we are telling the development community, this is an example to show why we picked that date, the only thing we're telling the developing community is your due date is going to be the first business day of every month for the next months' meeting. As far as if Robin needs 2 days or 10, we need 3 weeks instead of 2, this in here is flexible between consultants and it's town. We don't want to be so rigid here we just try to come up with a plan. The only thing that's going to matter to anybody is that pink due date and the day we give you your packet. Those are the two drop dead, and the legal posting, so I think you'll find we are going to be flexible amongst you. The sooner Bob and I get them, the better we're going to have, but we may have to pull John Brady in on something for interpretation that is going to be stuck in his grave for a long time; that he may have to go to books and cases and we'll just have to say you're not eligible, we still have a legal review to be done. So, like I said, that pre-qualification is very important, but that's the gray and yellow here is not as strict as we thought. We just had to come up with a plan that we could justify and this is justified when we go to public hearing for Council for an ordinance change, this will be justified this way. The one thing we'd be saying is this due date is now this. If this doesn't work right we'll test out this or if this doesn't work we'll let you know but based on the input from (unintelligible) we don't think we can meet this for you.

Virginia Weeks: Do we need a motion to approve this?

Debbie Pfeil: Motion for recommendation if you choose to go to Town Council for consideration of the new schedule.

Virginia Weeks: I make a motion that we approve this for to go to Town Council for consideration.

Linda Rogers: We have a motion, do we have a second.

Louise Frey: I'll second.

Linda Rogers: We have a motion and a second, all in Favor say "Aye". Opposed – None. You got it.

Debbie Pfeil: Okay, I got two other things to bring up. One would be a recommendation, I'm sorry, but one would be if, and this is a good one you brought up tonight was perfect. If you feel if you are going to have a conflict of interest, I recommend you contact the attorney directly, prior to the meeting because that can be done prior to the meeting. And there may be some times where you feel you may have a conflict and it's eating at you and you're not sure. That can all be done to the attorney. He would be privileged to your information.

Linda Rogers: Are we allowed to call him directly or are we supposed to go through the Town?

John Brady: I haven't turned down anybody's phone call; on a conflict of interest issue please call me. If chairs of all Town committees call me, then that's fine. Vice chairs if the chairs not

going to be there you can call me. Just find me and I will call you back. Virginia Weeks: So we should just call Linda and tell her we have a thing and Linda will call you.

John Brady: When you get your packet, and you say wait a second, that's my ex-spouse, or wait a second my family's involved in that business or something like that, that's when you can call me and say hey, should I vote in this or should I be involved, and I can answer that question for you.

Debbie Pfeil: Actually Robin made a good recommendation. Robin said they could call him and he could relay that back to you as much as we're working with you lately. That way you could call Robin as the...knowing about the votes.

Virginia Weeks: Okay.

John Brady: It's easier to get a hold of Robin and they've been emailing from Town Hall with a phone number and I've been calling off of that. These judges like me in court during the day and you like me here at night.

Debbie Pfeil: Thanks for you time and I do want to let you know that we're trying not to overbook your agendas, but we can't say how many applications we can take a night yet until we try this out, because I want to see how much this is going to streamline some of our stuff.

Ted Kanakos: When is our next meeting?

Debbie Pfeil: June 19th. And we're trying not to change those, Mr. Brady was really willing to work with us today.

Virginia Weeks: I have a, it's not about this, I just want to go and state that I am really concerned that we're going to send forth a recommendation to deny the conditional use. Debbie Pfeil: That's already been discussed and I don't think you can bring it up again, can she?

Virginia Weeks: But the minutes aren't going to go with it.

Debbie Pfeil: We are working on the minutes. It's on the agenda for what date Robin?

John Brady: The 7th.

Debbie Pfeil: On the 7th, and we'll attempt to have the minutes done by then. If not, Linda will do her normal report and if there's any questions, your chairperson will represent the planning commission. As far as reasons for denial, she would have to have those reasons. If they ask her questions, she would have to answer them. She represents the planning commission as the chair person.

Virginia Weeks: That's fine.

Debbie Pfeil: Any other questions from anybody? Thank you for your time from me.

Linda Rogers: Do we have a motion to adjourn?

Virginia Weeks: Motion to adjourn.

Bill Brierly: Second.

Linda Rogers: We are out of here.